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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~140.~~ 126.

THE UNITED STATES EX REL. RALPH W. DRURY AND JOHN DOWD, APPELLANTS,

vs.

EDWARD LEWIS, WARDEN OF THE COMMON JAIL OF ALLEGHENY COUNTY, PENNSYLVANIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED NOVEMBER 25, 1904.

(19540)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 440.

THE UNITED STATES EX REL. RALPH W. DRURY AND JOHN DOWD, APPELLANTS,

VS.

EDWARD LEWIS, WARDEN OF THE COMMON JAIL OF ALLEGHENY COUNTY, PENNSYLVANIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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1 Among the rolls, records, and judicial proceedings had in the Circuit Court of the United States in and for the Western District of Pennsylvania, at No. 1 of May term, 1904, may be found the following words and figures, to wit:

Docket entries.

THE UNITED STATES EX RELATIONE R. W. Drury and John Dowd, *vs.* EDWARD LEWIS, WARDEN OF THE common jail of Allegheny County, Pennsylvania.	Petition for writ of habeas corpus, filed February 8th, 1904, and same day presented in open court and writ awarded as prayed for.

1904, February 8th, writ of habeas corpus issued, directed to Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, commanding him to produce forthwith the bodies of Ralph W. Drury and John Dowd, now in his custody, before the judges of this court.

"Served at Pittsburgh, Pennsylvania, on Friday, February 8th, 1904, on Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, by making known to him and giving him said writ, of which this is a true copy.

"So answers STEPHEN P. STONE,
"*United States Marshal.*"

1904, March 8th, Edward Lewis, warden of the common jail of Allegheny County, above-named respondent, in compliance with the writ of habeas corpus, to me directed (which writ is hereto attached), do now this 8th day of February, 1904, produce here in court the bodies of Ralph W. Drury and John Dowd, as in said writ commanded. And I further answer and make return as directed in said writ, that said Ralph W. Drury and John Dowd are in my custody in pursuance of a commitment (a copy of which is hereto attached and made part hereof) issued out of the Court of Oyer and Terminer of Allegheny County, Pennsylvania, based upon an indictment found at No. 13, December ses-
2 sions, 1903, of said court, charging them in the first count thereof, with murder and in the second count thereof with manslaughter.

EDWARD LEWIS,
Warden of Allegheny County Jail.

And now, February 8th, 1904, the bodies of Ralph W. Drury and John Dowd being now here produced in open court in obedience to the writ of habeas corpus, it is now ordered that the said petitioners, Ralph W. Drury and John Dowd be released in giving bond in the sum of five thousand (5,000.00) dollars, conditioned for their appearance on February 22nd, 1904, at 10 o'clock a. m., to abide the decision and order of the court that may be then and there made, and not to depart the court without leave and further order of the court.

M. W. ACHESON,
Circuit Judge.

And now, February 8th, 1904, bond of Ralph W. Drury and John Dowd, with H. P. Bope as surety, conditioned for the appearance of said

Ralph W. Drury and John Dowd in this court on February 22nd, 1904, executed, approved, and filed.

1904, February 22nd, this cause came on to be heard upon the petition of relators and answer of Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, before the Honorable Marcus W. Acheson; James S. Young and D. M. Miller, esqs., appearing for the United States ex relatione, and John C. Haymaker and John Marron, esqs., for the said Edward Lewis, warden, and the taking of testimony proceeds. Witnesses for the United States: W. D. Fairchild, Ralph W. Drury, J. W. McFarland, M. D., E. B. Howarth, E. B. Robertson, John Dowd. Tuesday, February 23rd, 1904, trial proceeds, John Dowd resumes testimony. W. D. Fairchild recalled. Patrick O'Keefe, N. W. Backus, Edward Krause, Richard Jones, Joseph T. Kirk,
3 H. A. Statenfield, J. T. Evans, Geo. B. Simpson, G. W. McCartney, D. J. Lomax, Jerry Kenna, Geo. Swartz, Banjamin Kurtz, Geo. D. Du Barry, Frederick Brennan, Louis Brown, Florence Weiler, William Moore, Thomas S. Ailes, Samuel T. Riddle, Ada Claypole, and Emma Cooper.

Wednesday, February 24th, 1904, defendants open and call Mattie Terwilliger.

1904, February [illegible]th, cause argued, C. A. V.

1904, April 28th, opinion filed directing that an order will be made discharging the writ of habeas corpus and remanding the petitioners to the warden of the jail of Allegheny County.

And now, June 24th, 1904, this cause having come on heretofore to be heard upon a writ of habeas corpus, return testimony taken and evidence submitted, and having been duly argued by counsel, upon due consideration, the court now orders, adjudges, and decrees that the writ of habeas corpus be discharged and that the said R. W. Drury and John Dowd be remanded to the custody of Edward Lewis, the warden of the jail of the county of Allegheny, State of Pennsylvania, in accordance with the opinion of the court heretofore filed.

By the court.

M. W. ACHESON, *Circuit Judge.*

1904, June 24th, petition for appeal filed. Eo die, assignments of error filed.

And now, June 24th, 1904, it is ordered that the appeal be allowed as prayed for, and bail to be given by said relators and petitioners, R. W. Drury and John Dowd is hereby fixed in the sum of five thousand (5,000) dollars, and it is further ordered that the clerk of this court send up therewith to the Supreme Court of the United States, a transcript
4 of the petition, writ of habeas corpus, testimony taken and other proceedings, and opinion of the court duly authenticated in accordance with section 764–765 and the act of March 3rd, 1885, of the Revised Statutes of the United States.

M. W. ACHESON, *Circuit Judge.*

1904, June 24th, bond sur appeal of R. W. Drury and John Dowd in the sum of five thousand ($5,000.00) dollars with H. P. Bope as surety conditioned that said R. W. Drury and John Dowd shall appear to answer the judgment of said Appelate Court, executed and filed.

And now, to wit, June 24th, 1904, the foregoing recognizance approved and it is thereupon ordered that the said R. W. Drury and John Dowd be enlarged pending appeal to the Supreme Court of the United States under and subject to the conditions of the within recognizance.

M. W. ACHESON, *Circuit Judge.*

1904, June 24th, bill of exceptions sealed and filed.

5 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES EX REL. RALPH W. Drury and John Dowd,
vs.
EDWARD LEWIS, WARDEN OF THE COMMON jail of Allegheny County, Pennsylvania.
} No. 1, May term, 1904.

Petition for writ of habeas corpus.

To the honorable, the judges of the said court:

The petition of Ralph W. Drury and John Dowd, respectfully presents:

That they are now, and were on the 10th day of September, A. D., 1903, in the military service of the United States, your petitioner, Ralph W. Drury, being duly commissioned as a second lieutenant in Company C, 9th Regiment, United States Infantry, and your other petitionor, John Dowd, being enlisted as a private in Company A, 9th Regiment United States Infantry.

That they are now restrained of their liberty by, and are under the custody of one Edward Lewis, warden of the common jail of Allegheny County, in the State of Pennsylvania, and within this district, in violation of the Constitution and laws of the United States.

That said warden restrains them of their liberty and holds them in his custody by virtue of a commitment issued out of the court of oyer and terminer for the county of Allegheny and Commonwealth of

6 Pennsylvania, on the 8th day of February, A. D. 1904.

Said commitment is based on an indictment found at No. 13, December sessions, 1903, of said court of oyer and terminer which charges your petitioners, in the first count thereof, with the murder, on the 10th day of September, A. D. 1903, of one William H. Crowley, and in the second count thereof, with the manslaughter of the said Crowley on the same date. A copy of said indictment, marked "Exhibit A," is hereto attached and made a part hereof.

And your petitioners further represent unto your honorable court that they did not unlawfully make an assault upon and kill the said William H. Crowley, as charged in the aforesaid indictment, but did the acts upon which the said indictment is founded while acting within the scope of their authority and performing their duty as soldiers in the military service of the United States, and in obedience and pursuant to the laws thereof. That is to say, on September 10th, 1903, the date mentioned in said indictment, your petitioner, Ralph W. Drury, was a commissioned officer of the United States Army, as aforesaid, having under his command a

detachment of enlisted men, stationed at the Allegheny Arsenal, in Pittsburgh, Pennsylvania, said arsenal being a subpost of Fort Niagara, New York, for the purpose of guarding and protecting certain Government stores and property there located. Your other petitioner, John Dowd, on the day and date last aforesaid, was a private in the United States Army, stationed at the said Allegheny Arsenal, under the command of said Ralph W. Drury. Shortly before September 10, 1903, the date of the offense charged in the aforesaid indictment, a person or persons unknown to your petitioners had committed certain larcenies and other depredations upon the Government property at the said Allegheny
7 Arsenal, to wit, had feloniously ripped and stolen certain copper from said arsenal buildings, and had stolen certain other goods and property of the United States from said buildings. Information of said larcenies and other depredations having come to your petitioner, Ralph W. Drury, he communicated said information to the commanding officer of Fort Niagara, New York, his superior officer, who thereupon, in conjunction with said Drury, made an investigation thereof and then ordered your petitioner, Drury, to apprehend and arrest any person or persons committing said larcenies and other depredations.

That your petitioner, Ralph W. Drury, acting in pursuance of said order and in pursuance of his duty as commanding officer of said arsenal, ordered and instructed the men in his detachment, among them your petitioner John Dowd, to be specially vigilant in protecting and guarding the Government property, and to put forth special efforts to apprehend and arrest the person or persons engaged in said larcenies and other depredations. That on the morning of September 10th, 1903, the date mentioned in the indictment, said Ralph W. Drury received information to the effect that certain persons were then engaged in stealing copper from a certain building on said arsenal grounds. Whereupon said Ralph W. Drury immediately ordered out a detail of soldiers consisting of four men, with their arms, among them your petitioner, John Dowd, with instructions to proceed to the point where the larceny was being committed and to apprehend and arrest the persons engaged therein. Your petitioner, Ralph W. Drury, accompanied said detail. When said detail reached a point near the place where said larceny was being committed certain persons who were engaged in said larceny fled from the arsenal grounds and from said detail;
8 and that one of the persons so engaged in the larceny of the Government property and fleeing from said grounds and from the detail was William H. Crowley, who is mentioned in the indictment aforesaid as having been assaulted and killed by your petitioners.

That John Dowd, one of your petioners, acting in obedience to and in pursuance of said orders of Ralph W. Drury, his superior and commanding officer, and of his duties as a soldier, followed said William Crowley, calling upon him several times to halt, which command not being obeyed by said Crowley, was again twice repeated by your petitioner Dowd, with a warning each time that he would fire unless said command was obeyed; and that these commands with the accompanying warnings being disobeyed by said Crowley, who continued to flee from arrest and was about to disappear and escape behind certain lumber piles near said arsenal, when said John Dowd, being unable to perform his duties as a soldier, and to carry out the orders of his said superior officer by any other means, and with intent to bring said Crowley to a halt rather than

to kill or seriously wound him, fired upon and wounded said Crowley, which wound subsequently resulted in the death of said Crowley.

And it is also represented to your honorable court that your petitioner, Ralph W. Drury, having taken a different route than that followed by said John Dowd, to the point where the larcenies aforesaid were being committed, did not arrive at the locality of the shooting until after said William H. Crowley had been wounded as aforesaid, and is connected with said shooting only by reason of the fact that he gave the orders to his said detachment and detail of soldiers, among them the said

9 John Dowd, to arrest the persons committing larceny upon the Government property as aforesaid.

Your petitioners therefore, showing to your honorable court that they are in the military service of the United States, and are restrained of their liberty contrary to the Constitution and laws of the United States, and are in the custody of the of said warden of the Allegheny County jail for an act or acts done by them in pursuance of the laws of the United States, and while engaged in good faith in the performance of their duties and within the scope of their authority, pray your honorable court for a writ of habeas corpus directed to said Edward Lewis, warden of the common jail of Allegheny County, commanding him to produce forthwith the bodies of your petitioners before your honorable court; and that your honorable court will summarily hear them and inquire of their unlawful and unjust detention, and discharge them from said unlawful custody, as law and justice require.

And they will ever pray, etc.

RALPH W. DRURY.
JOHN DOWD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, a notary public in and for said county and State, personally appeared Ralph W. Drury and John Dowd, who, being duly sworn according to law, depose and say that the facts set forth in the above petition are correct and true, as they verily believe.

RALPH W. DRURY.
JOHN DOWD.

Subscribed and sworn to before me this 8th day of February, A. D. 1904.

[SEAL.] HARVEY M. MILLER,
Notary Public.

My commission expires January 19th, 1907.

10 And now, to wit, February 8th, 1904, the foregoing petition presented in open court and upon consideration thereof, and upon motion of James S. Young, United States attorney, it is ordered that a writ of habeas corpus issue directed to Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, in this district, commanding him to produce the bodies of Ralph W. Drury and John Dowd, the within named petitioners, in this court at the city of Pittsburgh forwith; and also make return of his authority for the detention of said petitioners.

M. W. ACHESON,
Circuit Judge.

except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him in order to bring him to trial. If, upon such application, any officer refuses or wilfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service."

This enactment is a distinct recognition by Congress of the general jurisdiction in time of peace of the civil courts of a State over
23 persons in the military service of the United States who are accused of a capital crime, or of any offense against the person of a citizen, committed within such State. Such criminal jurisdiction has always been exercised by the State courts, Coleman v. Tennessee, 97 U. S., 509, 514.

Clearly the indictment against the petitioners presents a case prima facie cognizable by the State court. Does the evidence disclose any ground to defeat that jurisdiction or show a case requiring interference by this court to prevent the trial of the petitioners upon the indictment? I feel constrained to answer negatively. The shooting of Crowley did not take place upon the land purchased by the United States for military purposes by consent of the legislature of the Commonwealth of Pennsylvania, but outside the arsenal property. It occurred within the territorial jurisdiction of the State court in which the indictment is pending—the only civil court which could have jurisdiction to try the petitioners for the alleged unlawful killing of Crowley. The shooting was not done in obedience to a command to fire given to Drury and Dowd by their superior officer. It will be remembered that the shooting which Dowd did and Drury is alleged to have directed was, according to the testimony for the Commonwealth, of a man who had ceased flight and offered to surrender. It may be conceded that it was the right and duty of the petitioners to pursue and arrest Crowley, who was suspected (justly it now seems) of being concerned in the larceny of some pieces of copper taken off one of the arsenal buildings, but it by no means follows that the homocide, as testified to by the witnesses for the Commonwealth, is not rightfully the subject of judicial investigation in the orderly course of procedure by the civil court having jurisdiction of such offenses as are charged in this indictment. Crowley, moreover, was a citizen of
24 Pennsylvania. He was not in military service nor subject to military law. The case is wholly unlike the cases of United States v. Clark, 31 Fed. Rep., 710, and In re Fair, 100 Fed. Rep., 149. In the former of these cases the shooting occurred within a military reservation of the United States and was of a military convict (a soldier), by a military guard to prevent the escape of the convict. In the other case (in re Fair) the person shot was a military prisoner held in a fort of the United States under a charge of desertion, who with violence had overcome his military guard and was immediately pursued beyond the fort by soldiers on guard duty, who fired to prevent his escape. Moreover in each of those cases, and indeed in every case brought to my attention wherein a United States court or judge upon habeas corpus has discharged a prisoner in custody under State authority, the facts entitling the prisoner to exemption to State control were undisputed. This was

so in the cases In re Neagle, supra; In re Waite, supra; In re Lewis, 83 Fed. Rep., 159; United States v. Fuelhart, 106 Fed. Rep., 911; In re Turner, 119 Fed. Rep., 231, and Ohio v. Thomas, supra. But in the present case there is a serious conflict of evidence involving an important issue of fact, namely, whether Crowley was shot while fleeing to escape arrest or after he had stopped and turned around, and virtually had surrendered.

It is very clear that on a habeas corpus hearing such as this it is not competent for the court to determine upon conflicting evidence whether the person under indictment in the State court is guilty or innocent of the offense of which he is accused. Ex parte Crouch, 112 U. S., 178, 180. Whether the shooting of Crowley was justifiable or excusable must be determined by the State court to whose jurisdiction the petitioners are subjected. That the petitioners will be protected by that court in all their legal rights is not to be doubted.

25 An order will be made discharging the writ of habeas corpus and remanding the petitioners to the custody of the warden of the jail of Allegheny County.

(Endorsed:) No. 1, May term, 1904. The United States, ex rel. Ralph W. Drury and John Dowd, vs. Edward Lewis, warden of the common jail of Allegheny County, Penna. Sur writ of habeas corpus. Opinion of the court, Acheson, circuit judge. Filed April 28th, 1904. H. D. Gamble, clerk.

26 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES, EX RELATIONE R. W. Drury and John Dowd, *vs.* EDWARD LEWIS, WARDEN OF THE common jail of Allegheny County, Pennsylvania.	No. 1, May term, 1904.

Order and decree of court.

And now, June 24th, 1904, this case having come on heretofore to be heard upon a writ of habeas corpus, return, testimony taken, and evidence submitted, and having been duly argued by counsel, upon due consideration the court now orders, adjudges, and decrees that the writ of habeas corpus be discharged, and that the said R. W. Drury and John Dowd be remanded to the custody of Edward Lewis, the warden of the jail of the county of Allegheny, State of Pennsylvania, in accordance with the opinion of the court heretofore filed.

By the court:

M. W. ACHESON, *Circuit Judge.*

Filed June 24th, 1904.

H. D. GAMBLE, *Clerk.*

27 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES, EX RELATIONE R. W. Drury and John Dowd,
vs
EDWARD LEWIS, WARDEN OF THE common jail of Allegheny County, Pennsylvania.
No. 1, May term, 1904.

To the honorable the judges of said court:

The United States, by James S. Young, United States attorney for the Western District of Pennsylvania, and the relators and petitioners for the writ of habeas corpus, R. W. Drury and John Dowd, respectively, feeling itself and themselves aggrieved by the order entered the 24th day of June, 1904, in the above-stated case discharging the writ of habeas corpus issued in said case, and that said order is in violation of the Constitution and laws of the United States, do hereby appeal from said order to the Supreme Court of the United States, and respectfully pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States. And further pray that, pending said appeal, the said relators and petitioners, R. W. Drury and John Dowd, may be enlarged upon bail to be duly approved, conditioned that if they fail to prosecute said appeal with effect that they and each of them shall appear to answer the judgment of the appellate court.

And will ever pray, &c.,

THE UNITED STATES,
By JAMES S. YOUNG,
United States Attorney.
R. W. DRURY,
JOHN DOWD,
Relators & Petitioners.

28 WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

R. W. Drury and John Dowd, relators and petitioners above named, being duly sworn, say that the above appeal is not intended for delay, but because they verily believe that injustice has been done to them and each of them.

R. W. DRURY.
JOHN DOWD.

Sworn and subscribed this 24th day of June, 1904.

WM. T. LINDSEY,
Clerk, United States District Court, Western District of Pennsylvania.

And now, to wit, June 24th, 1904, it is ordered that the above appeal be allowed as prayed for, and bail to be given by said relators and petitioners, R. W. Drury and John Dowd, is hereby fixed in the sum of five thousand dollars. And it is further ordered that the clerk of this court send up therewith to the Supreme Court of the United States a transcript

of the petition, writ of habeas corpus, testimony taken, and other proceedings and opinion of the court, duly authenticated, in accordance with section 764, 765, and the act of March 3, 1885, Revised Statutes of the United States.

M. W. ACHESON, *Circuit Judge.*

29 In the Circuit Court of the United States, for the Western District of Pennsylvania.

THE UNITED STATES, EX RELATIONE R. W. Drury and John Dowd,
vs.
EDWARD LEWIS, WARDEN OF THE common jail of Allegheny County, Pennsylvania.

No. 1, May term, 1904. Petition for writ of habeas corpus.

Assignments of error.

And now, June 24th, 1904, came James S. Young, United States attorney and counsel for the above-named R. W. Drury and John Dowd, relators and petitioners, and filed the following statement of the errors alleged to have been made by the order or decree appealed from, and in the findings and proceedings on which the same rest:

(1) The court erred in excluding the following testimony, offered on behalf of the United States, the witness being Lieutenant-Colonel E. R. Robertson, the officer in charge of the post, under whom the said R. W. Drury and John Dowd were stationed (see page 301 of the testimony filed):

"Now, I desire to ask you, Colonel, whether, when John Dowd made the arrest, or attempted to make the arrest, and did make the arrest by the shooting of Crowley in the manner indicated by the testimony, he was complying with your orders?

"(Objected to, as immaterial.)

"PER CURIAM. Objection sustained. The witness was not present at the time of the arrest. He did not order the shooting of Crowley.
30 His orders related to the patrol of the arsenal grounds. His opinion on the testimony is immaterial and incompetent."

(2) The court erred in the opinion filed April 28th, 1904, in its construction of the law relating to the duty of the court in habeas corpus proceedings, namely:

"It is not for me to say whether or not the witnesses who have testified thus on the part of the Commonwealth are mistaken" (see pages 3 and 4 of the opinion of court filed).

"Moreover, in each of these cases, and indeed in every case brought to my attention wherein a United States court or judge upon habeas corpus has discharged a prisoner under State authority, the facts entitling the prisoner to exemption from State control were undisputed. This was so in the cases In re Neagle, supra; In re white, supra; In re Lewis, 83 Fed. Rep., 159; United States vs. Fuelhart, 106 Fed. Rep., 911; In re Turner, 119 Fed. Rep., 231, and Ohio v. Thomos, supra. But in the present case there is a serious conflict of evidence involving an important issue of fact, namely, whether Crowley was shot while fleeing to

escape arrest or after he had stopped and turned around, and virtually had surrendered. It is very clear that on a habeas corpus hearing such as this, it is not competent for the court to determine upon conflicting evidence whether the person under indictment in the State court is guilty or innocent of the offense of which he is accused. Ex parte Crouch, 112 U. S., 178, 180." (See pages 6 and 7 of the opinion filed.)

31 (3) The court erred in not passing upon the creditability of the witnesses.

(4) The court erred in not hearing and determining the facts in a summary way, and in not entering a decree discharging the said R. W. Drury and John Dowd from the custody of the State authorities, as required by law and justice.

(5) The court erred in not finding that under the pleadings, the testimony, and evidence submitted, the State court did not have jurisdiction to try the said R. W. Drury and John Dowd for the alleged crime of killing William H. Crowley, and in not entering a decree in accordance therewith.

(6) The court erred in not finding that under the pleadings, the testimony, and evidence submitted, that the said R. W. Drury and John Dowd are in custody for an act done in pursuance of a law of the United States, and in not entering a decree in accordance therewith.

(7) The court erred in not finding that under the pleadings, the testimony, and evidence submitted, that the said R. W. Drury and John Dowd are in custody in violation of the Constitution and laws of the United States, and in not entering a decree in accordance therewith.

(8) The court erred in not entering a decree that the said R. W. Drury and John Dowd in attempting to make the arrest (and in shooting the said William H. Crowley by said John Dowd) were acting within their authority and duty as soldiers of the United States, and were and are not amenable to State process therefor.

32 (9) The court erred in entering the order and decree of June 24th, 1904, as follows:

"And now, June 24th, 1904, this cause having come on heretofore to be heard upon a writ of habeas corpus, return, testimony taken, and evidence submitted, and having been duly argued by counsel, upon due consideration, the court now orders, adjudges, and decrees that the writ of habeas corpus be discharged, and that the said R. W. Drury and John Dowd be remanded to the custody of Edward Lewis, the warden of the jail of the county of Allegheny, State of Pennsylvania, in accordance with the opinion of the court hereto filed,"

and in dismissing the writ of habeas corpus and remanding said R. W. Drury and John Dowd into the custody of Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania.

(10) The court erred in not entering an order of decree sustaining the writ and discharging the said R. W. Drury and John Dowd from the custody of the authorities of the Commonwealth of Pennsylvania.

(11) The court erred in its order of June 24th, 1904, in remanding the said R. W. Drury and John Dowd to the jurisdiction of the State courts for the killing of said William H. Crowley, the said R. W. Drury and John Dowd being at the time of the killing performing their duties

as United States soldiers, even though the said R. W. Drury and John Dowd did what was not required of them and exceeded their duty.

33 (12) The court erred in its order of June 24th, 1904, in remanding the said R. W. Drury and John Dowd to the jurisdiction of the State courts for the killing of said William H. Crowley, the said killing resulting from an attempt to arrest the party who had committed a felony against the property of the United States.

(13) The court erred in its order of June 24th, 1904, in remanding the said R. W. Drury and John Dowd to the jurisdiction of the State courts for the killing of said William H. Crowley, for the reason that the said R. W. Drury and John Dowd at the time of the killing were the agents of the United States engaged in protecting the property of the United States, and as such agents are amenable only to the jurisdiction of the United States and not to the jurisdiction of the State.

(14) The court erred in its order of June 24th, 1904, in remanding the said R. W. Drury and John Dowd to the jurisdiction of the State courts for the killing of said William H. Crowley, in view of the pleadings, testimony taken, and the law applicable thereto.

(15) The court erred in not entering a decree discharging the said R. W. Drury and John Dowd from custody.

JAMES S. YOUNG,
United States Attorney.

34 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

We, the undersigned, do hereby acknowledge ourselves indebted to the United States of America in the penal sum of five thousand dollars, lawful money of the United States, to be levied of our goods and chattels, lands and tenements, to the use of the said United States, and to which payment well and truly to be made, we and each of us do bind ourselves, our heirs, executors, and administrators, and each and every of them, jointly and severally, firmly by these presents. Dated at Pittsburgh, this 24th day of June, A. D. 1904.

Whereas R. W. Drury and John Dowd have appealed to the Supreme Court of the United States to reverse the decree in the case of the United States ex rel R. W. Drury and John Dowd vs. Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, No. 1, May Term, 1904,

Now the condition of this recognizance is such, that if said R. W. Drury and John Dowd shall appear to answer the judgment of said appellate court, then this obligation to be void; otherwise remain in full force and virtue.

R. W. DRURY.
JOHN DOWD.
H. P. BOPE.

Taken and acknowledged in open court this 24th day of June, A. D. 1904.

H. D. GAMBLE,
Clerk U. S. Circuit Court, Western District of Pennsylvania.

35 Recognizance endorsed as follows:

WESTERN DISTRICT OF PENNSYLVANIA, ss.

H. P. Bope, of Pittsburgh, Pa., surety to the within recognizance of bail, being duly sworn, does depose and say that he is the owner of real estate situate within the western district of Pennsylvania, viz: In Allegheny County, Pennsylvania, worth the sum of five thousand dollars over and above all his just debts and liabilities.

H. P. BOPE.

Subscribed and sworn to this 24th day of June, A. D. 1904, before me.

H. D. GAMBLE,
Clerk, United States Circuit Court,
Western District of Pennsylvania.

And now, to wit, June 24th, 1904, the foregoing recognizance approved, and it is thereupon ordered that the said R. W. Drury and John Dowd be enlarged, pending appeal to the Supreme Court of the United States, under and subject to the conditions of the within recognizance.

M. W. ACHESON,
Circuit Judge.

36 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES EX REL. RALPH W. Drury and John Dowd,
v.
EDWARD LEWIS, WARDEN OF THE COMMON jail of Allegheny County, Pennsylvania. } No.

Before Honorable M. W. Acheson.

Held at Pittsburgh, Pa., on Monday, February 22, 1904.

Appearances. For the petitioners: Hon. James S. Young, U. S. Attorney, and D. M. Miller, esq., Assistant U. S. Attorney. For the respondent: John Marron, esq., and John C. Haymaker, esq.

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39 W. D. FAIRCHILDS, sworn.

Direct examination by Mr. YOUNG:

Q. Where do you live, Mr. Fairchilds?

A. Pittsburgh.

Q. What is your business?

A. Surveyor.

Q. Where are you employed?

A. United States Engineer's Office.

Q. How long have you been a surveyor?

A. 13 years.

Q. You know the arsenal property?

A. Yes, sir.

Q. A description of that property was furnished you, and you made a survey of it?

A. Yes, sir.

Q. Look at this map, and see if that is the map you made of it?

A. Yes, sir; that is the map.

Q. Now, does that show the buildings, the walls, streets, and railroad indicated on it accurately and correctly?

A. Yes, sir.

Q. You have made a scale on it?

40 A. Yes, sir.

Q. And it is drawn according to that scale?

A. Yes, sir.

11 In the Court of Oyer and Terminer and general jail delivery for the county of Allegheny, of December sessions, A. D. 1903.

Exhibit A.

ALLEGHENY COUNTY, *ss:*

The grand inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the county of Allegheny, upon their oaths and solemn affirmations, respectively, do present that John Dowd and R. W. Drury, late of the county aforesaid, yeoman, on the tenth day of September, in the year of our Lord one thousand nine hundred and three, at the county aforesaid, and within the jurisdiction of this court, with force and arms, in and upon the body of one William H. Crowley, in the peace of God and this Commonwealth, then and there being feloniously, willfully, and of their malice aforethought, did make an assault and him the said Wm. H. Crowley then and there feloniously, wilfully and of their malice aforethought, did kill and murder, contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the inquest aforesaid, upon their oaths and solemn affirmations aforesaid, do further present that the said John Dowd and R. W. Drury, on the day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, in and upon the body of the said William H. Crowley, in the peace of God and this Commonwealth, then and there being, feloniously did make and assault

12 and the said William H. Crowley then and there feloniously did kill and slay, contrary to the form of the act of the general assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

JNO. C. HAYMAKER,
District Attorney for Allegheny County.

Test pro respub.
Jesse M. McGeary,
Mattie Turlegher,
Mrs. Long,
Mrs. Schrum,
Peter Welsh.

Sworn by me, J. J. CUMMIN, *Foreman.*

(Endorsed as follows:) No. , December sessions, 1903. Commonwealth vs. John Dowd et al. First count, murder. Second count, manslaughter. Prosecutor, Jesse M. McGeary, on December 16th, 1903. True bill. J. J. Cummin, foreman. 19 . The defendant.

13 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania:

We command you that the bodies of Ralph W. Drury and John Dowd, under your custody detained, by whatsoever name or names they may be called or charged, together with a return of the date and cause of their

detention, you have before the judges of the Circuit Court of the United States for the Western District of Pennsylvania, at a session of the same court to be holden at the city of Pittsburgh forthwith, then and there to do, and be subject to whatever said judges may consider in that behalf.

And have you then and there this writ.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Pittsburgh, in said district, this 8th day of February, A. D. 1904.

H. D. GAMBLE, *Clerk.*

[SEAL.]

Served at Pittsburgh, Pa., on February 8th, 1904, on Edward Lewis, warden of the common jail of Allegheny County, Pa., by making contents of the original writ known to him and giving him said writ, of which this is a true copy.

So answers

STEPHEN P. STONE,
U. S. Marshal.

14 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES EX REL. RALPH W. DRURY and JOHN DOWD,
vs.
EDWARD LEWIS, WARDEN OF THE COMMON JAIL OF ALLEGHENY COUNTY.
} No. 1, May term, 1904.

1904, MARCH 8th.

To the honorable the judges of said court:

I, Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, above-named respondent, in pursuance of and in compliance with the writ of habeas corpus directed to me in the above-entitled case (which writ is hereto attached) do now, this 8th day of February, A. D. 1904, produce here in court the bodies of Ralph W. Drury and John Dowd, as in said writ commanded. And I further answer and make return, as directed in said writ, that said Ralph W. Drury and John Dowd are in my custody in pursuance of a commitment (a copy of which is hereto attached and made a part hereof) issued out of the court of oyer and terminer of Allegheny County, Pennsylvania, based upon an indictment found at No. 13, December sessions, 1903, of said court, charging them in the first count thereof with murder and in the second count with manslaughter.

EDWARD LEWIS,
Warden of Allegheny County Jail.

15 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania:

We command you that the bodies of Ralph W. Drury and John Dowd, under your custody detained, by whatsoever name or names they may be

called or charged, together with a return of the date and cause of their detention, you have before the judges of the Circuit Court of the United States for the Western District of Pennsylvania, at a session of the same court to be holden at the city of Pittsburgh forthwith, then and there to do, and be subject to whatever said judges may consider in that behalf.

And have you then and there this writ.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Pittsburgh, in said district, this 8th day of February, A. D. 1904.

[SEAL.] H. D. GAMBLE, *Clerk.*

16 State of Pennsylvania, County of Allegheny.

COMMONWEALTH, vs. R. W. DRURY AND JOHN DOWD. } Charge: No. 13, O. & T., Dec. Sess., 1903. Murder.

I, Francis X. Barr, clerk of the court of quarter and oyer & terminer sessions in and for said county, do hereby certify that on the 13th day of October, A. D. 1903, H. P. Bope became bail for the said R. W. Drury and John Dowd, in the above case, in the sum of five thousand dollars, by recognizance taken and acknowledged before Francis X. Barr, clerk of courts, on the day and year aforesaid, according to law; conditioned that the said R. W. Drury and John Dowd should be and appear at the December term of the said court of quarter sessions and oyer & terminer to be held in and for said county, to answer the aforesaid charge, and not to depart the county without leave.

Witness my hand and the seal of the said court this 8th day of February, 1904.

FRANCIS X. BARR, *Clerk.*

(Endorsed as follows:) I, R. P. Bope, authorize and empower bail piece according to law. Bail as within appears, hereby depute to execute this.

And now, to wit, February 8th, 1904, H. P. Bope, the surety named in the within bail piece, produces and surrenders here in open court the bodies of R. W. Drury and John Dowd, the defendants within named, and it appearing that said defendants stand indicted at No. 13, December sessions, 1903, with murder in the first count and manslaughter in the second count thereof; it is therefore ordered that said defendants, R. W. Drury and John Dowd, be committed to the common jail of county, pending the trial of said defendants upon said indictment or until otherwise discharged by due course of law.

BY THE COURT.

From the record.
Attest.
[SEAL.] F. X. BARR, *Clerk of Courts.*

17 UNITED STATES OF AMERICA,
Western District of Penn'a, ss:

You and each of you do acknowledge yourselves indebted to the United States of America in the sum of five thousand dollars, lawful money of the United States, to be levied of your goods and chattels, lands and tenements, to the use of the said United States, and to which payment well and truly to be made to the said United States, you and each of you do bind yourselves, your heirs, executors, and administrators, and each and every of them, jointly and severally, firmly by these presents.

Now the condition of this obligation is such that if Ralph W. Drury and John Dowd, who have been charged with and indicted for murder and now produced upon a writ of habeas corpus, shall be and appear at the Circuit Court of the United States for the Western District of Pennsylvania, to be holden at Pittsburgh on the 22nd day of February, A. D. 1904, then and there to answer any charge or charges that may be then and there alleged against them and not depart the court without leave, then the obligation to be void, otherwise to remain in full force and virtue.

RALPH W. DRURY.
JOHN DOWD.
H. P. BOPE.

Taken and acknowledged before me this 8th day of February, 1904.

H. D. GAMBLE,
United States Commissioner.

18 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES, EX REL. RALPH W. Drury and John Dowd,
vs.
EDWARD LEWIS, WARDEN FOR THE COMMON jail of Allegheny County, Pennsylvania.
} No. 1, May term, 1904.

Sur writ of habeas corpus.

ACHESON, circuit judge.

On the 8th day of February, 1904, the date of the issuing of this writ of habeas corpus, and at the time the writ issued, the petitioners, Ralph W. Drury and John Dowd, were in the custody of Edward Lewis, warden of the jail of Allegheny County, Pennsylvania, by virtue of a commitment issued on that day out of the court of oyer and terminer for the county of Allegheny and Commonwealth of Pennsylvania. This commitment was based on an indictment found on December 16th, 1903, in the said court of oyer and terminer, which indictment charges these petitioners, in the first count thereof, with the murder of one William H. Crowley, and, in the second count thereof, with the manslaughter of the said Crowley on September 10th, 1903. The petitioners had been at large on recognizance in the sum of $5,000.00, taken by the court of oyer and terminer, conditioned for their appearance in that court to answer the indictment. With the consent of the petitioners, and by prearrangement with their bail, they were surrendered by their bail on the 8th day of

February, 1904, for the purpose of enabling them to apply for and prosecute this writ of habeas corpus.

19 The case disclosed by the evidence submitted on the hearing of this writ is as follows: On September 10th, 1903, Ralph W. Drury was a commissioned officer of the United States Army, of the rank of second lieutenant, and had under his command a detachment of twenty enlisted men, of whom John Dowd was one, stationed at Allegheny Arsenal, in the city of Pittsburgh, in Allegheny County, Pennsylvania, this arsenal being a subpost of Fort Niagara, New York. From time to time before September 10th, 1903, some copper down spouts and eve troughs had been stripped from some of the buildings on the arsenal grounds and the material stolen, and other depredations, such as the breaking of window lights, had been committed on the arsenal property. Lieut. Col. Robertson, the commanding officer at Fort Niagara, on the occasion of an inspection of Allegheny Arsenal, in July, 1903, had directed Lieutenant Drury to use his best endeavors to stop the depredations, and to that end ordered him to establish a patrol of the guards day and night upon the arsenal grounds, and to apprehend and arrest any person or persons committing depredations on the arsenal property. Shortly before 10 o'clock on the morning of September 10th, 1903, having received word that some persons were stealing copper from one of the buildings on the arsenal grounds, Lieutenant Drury took John Dowd, then on guard duty, and another private soldier (each of the latter being armed with a rifle and ammunition), and, passing out of the arsenal grounds through the gate on Butler street, the three proceeded by way of Butler street and Almond alley towards the Allegheny Valley Railroad. Drury informed the two men of the reported stealing of copper and instructed them to continue down Almond alley and to arrest

20 any person coming from the arsenal. Drury himself left Almond alley at the corner of Willow street and went by Willow street to Fortieth street (which runs along but outside of the arsenal wall), and proceeded down Fortieth street to its foot, where were congregated three or four half-grown boys or young men, among whom was William H. Crowley, aged about 19 or 20 years. These persons fled in different directions when they saw Lieutenant Drury approaching. Crowley ran from the foot of Fortieth street away from the arsenal property in the direction of Forty-first street, keeping on or near the Allegheny Valley Railroad. When he was about one hundred yards from the arsenal wall Crowley was shot by Dowd, who aimed and fired his rifle at Crowley. At the time of the shooting, Drury, Dowd, and Crowley were all off the ground belonging to the United States. Each one of the three then stood either upon a street of the city, on the Allegheny Valley Railroad, or on private property. The rifle ball struck Crowley's left thigh, inflicting a mortal wound from which he died on the evening of the same day—September 10th, 1903.

Thus far the facts are not open to dispute under the testimony. But as to the circumstances attending the shooting of Crowley the evidence is conflicting and leads to opposite conclusions of fact as one or other version of the affair given by the witnesses is accepted. Dowd testifies, and the petitioners have produced other evidence tending to show, that as Crowley fled he was called on several times by Dowd, who followed

him, to halt, with warning that unless he halted Dowd would fire; that Crowley did not halt, but continued his flight, and to prevent his escape behind or through a lumber pile Dowd fired, and that Drury did not order Dowd to fire, and was not connected with the shooting save by the fact that he ordered the arrest of any person coming from the arsenal. On the other hand, two witnesses who were present
21 (Miss Terwillerger and Mrs. Long) testify that before the shot was fired Crowley stopped, turned around facing the pursuing soldier (Dowd), threw up his hand, said, "Don't shoot," "I will come back," or "I will give up," and that just then Lieutenant Drury said "fire," and Dowd fired the shot that killed Crowley. The testimony of at least one other witness tends to corroborate the account of the transaction given by the two named women as above recited. It is not for me to say whether or not the witnesses who have testified thus on the part of the Commonwealth are mistaken.

In view of all the evidence herein, should this court interfere to prevent the trial of the petitioners upon the indictment in the State court, take the petitioners out of the custody of the authorities of the State, and discharge them finally without trial by any civil court in the regular administration of justice? This is the question which confronts me.

Undoubtedly a court or judge of the United States is authorized to grant a writ of habeas corpus for the purpose of inquiring into the cause of the restraint of the liberty of any prisoner held in custody under the authority of a State, whether by virtue of an indictment or otherwise, whenever it is in due form alleged that he is in custody for an act done or omitted in pursuance of a law of the United States, or is in custody in violation of the Constitution or of a law or treaty of the United States, and to proceed in a summary way to determine the facts "and thereupon to dispose of the party as law and justice require." But in the exercise of this authority the courts and judges of the United States are to be governed by the principles laid down by the Supreme Court in the cases of ex parte Royall, 117 U. S., 241; Whitten v. Tomlinson,
22 160 U. S., 231; and Baker v. Grice, 169 U. S., 284. The doctrine of those cases is that except in instances of peculiar urgency or where there is no jurisdiction in the State court to try the prisoner for the offense charged (as were the cases In re Neagle, 135 U. S., 1; In re Waite, 81 Fed. Rep., 359, and Ohio v. Thomas, 173 U. S., 276), the court or judge should not discharge the prisoner in advance of his trial in the State court, and even after the final determination of the case in the State courts should generally leave him to his remedy by writ of error from the Supreme Court of the United States.

As the primary question here is whether the petitioners are amenable to the State court upon the indictment found therein, it is proper to quote at length one of the articles for the government of the armies of the United States prescribed by section 1342 of the Revised Statutes of the United States, viz:

"Art. 59. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment, to which the person so accused belongs, are required,

Q. Instead of his beat being just at what you call the sally port, the gate on Butler street, it was extended around through the grounds in this way?

A. Yes, sir.

Q. And the sentinel on guard would do that?

A. Yes, sir.

54 Q. And your instructions to him or to them were to do these things?

A. Yes, sir.

Q. What else did you order them to do?

A. To arrest all persons committing depredations or trespassing on the arsenal property, to call upon them to halt at least three times, and then to warn them that if they didn't halt he would fire, but not to fire except as a last resort.

Q. Under your arrangement out there you were commanding officer?

A. Yes, sir.

Q. And I suppose as commanding officer you were officer of the day?

A. Yes, sir.

Q. Did you have any commissioned officers other than yourself?

A. No, sir.

Q. Did you have noncommissioned officers?

A. Yes, sir.

Q. And what noncommissioned officers?

A. Corporals and sergeants; three corporals and one sergeant.

Q. Give me their names.

A. Edward Krause, Norman W. Backus, and Thomas Dawson, corporals, and J. Douglas, sergeant.

Q. Now, Mr. Drury, did you communicate these orders directly to the men?

A. No, sir.

55 Q. How did you communicate them?

A. Communicated them to the commander of the guard.

Q. And the commander of the guard would be what officer?

A. One of these noncommissioned officers.

Q. One of the noncommissioned officers would be, because he was performing a certain duty, called commander of the guard. There was no officer known as commander of the guard?

A. Yes, sir.

Q. No special man, except when he was assigned to that duty?

A. The regulations prescribed that when there is no officer of the guard, the senior noncommissioned officer is commander of the guard, and by virtue of his commission there was always a commander of the guard.

Q. He was one of which people?

A. One of the three corporals whom I have named.

Q. Now, you may state whether you conveyed your instructions and orders to one of these noncommissioned officers.

A. I conveyed those to one of the noncommissioned officers.

Q. Did you convey them to all of them?

A. Not directly. After orders had been given to the commander of the guard, when the next guard comes on, the guard being relieved turns over those instructions to the guard who is relieved.

Q. Well, how does the guard get in the first place, or the sentinel?

56 A. The instructions are first given to the commander of the guard. The commander of the guard sees that those instructions are given to the sentinel to whom they pertain. If the commander of the guard was a commissioned officer he would direct the senior noncommissioned officer to have those instructions conveyed to the sentinels to whom they pertained.

Q. Now, in this case, did you give those instructions to one of these noncommissioned officers who was acting as commander of the guard?

A. I did.

Q. His duty would be to give it to the sentinel coming on duty?

A. Yes, sir.

Q. And, as I understand you, when that sentinel left his post—just before leaving his post—he would turn over those special orders to the next sentinel coming on duty, and in whose presence?

A. In the presence of the corporal of his relief.

Q. He would be for the time what?

A. In this particular case, the commander of the guard.

Q. And would that continue from day to day?

A. Yes, sir.

Q. On every relief?

A. Yes, sir.

57 Q. Now, I want you to say whether at any time you made inquiries or did anything to determine whether your special instructions or special orders had reached the different sentinels?

A. I always inspected my sentinels from time to time, and had them turn over in military language to me the general and special orders.

Q. You spoke of general orders; what are they?

A. General orders are those orders which apply to all posts and to every sentinel in the Army.

Q. They are prescribed where?

A. In the Guard Manual, as a part of the Army Regulations.

Q. Furnished to the Army?

A. Yes, sir.

Q. Will you just give us now, if you can, the general orders?

A. The general orders are to take charge of this post and all Government property in view——

(Objected to by Mr. Marron.)

Q. Did you have these sentinels repeat their general orders to you?

A. Yes, sir.

Q. What did they actually repeat to you?

A. My general orders are to take charge of this post and all Government property in view, walk my post in military manner, keep-

58 ing constantly on the alert, and observing everything that takes place in sight and hearing; to report every breach of orders or regulations that I am instructed to enforce; to repeat all calls from posts more distant from the guardhouse than my own; to receive and transmit all orders from my superior officer, and to allow myself to be relieved by the commanding officer; to allow myself to be relieved by the commanding officer, the officer of the day, the officer or noncommissioned officer of

the guard only; to hold conversation with no one except in the proper discharge of my duty. You will allow no one to commit nuisance in the vicinity of my posts; to quit my post only when properly relieved; in case of fire or disorder to give alarm. In cases not covered by the instruction, to call the corporal of the guard. To salute officers and colors or standard not cased; at night to exercise the greatest vigilance; to challenge all persons or parties seen on or near my posts, and to allow no one to pass without proper authority. The general orders pertaining to which are as follows:

Q. I don't think you need go into that. Now, you had, you say, the different men of this detachment repeat those general orders to you. You may state whether you had them repeat special orders.

A. Yes, sir.

Q. You may state whether you had them repeat the special orders that you have spoken of.

59 A. I did.

Q. Were you satisfied that they understood the orders?

A. Yes, sir.

Q. And did you do that more than once?

A. Yes, sir.

Q. You may state whether you recollect of giving these special orders to John Dowd.

A. Yes, sir.

Q. Did you have John Dowd repeat them to you?

A. Yes, sir.

Q. You gave them to John Dowd through the commander of the guard?

A. Yes, sir.

Q. And you had John Dowd repeat them to you afterwards?

A. Yes, sir.

Q. You may state when you, on any particular occasion that you recall, went over this matter, all or any part of it, with the men.

A. I remember one morning—a Saturday morning inspection.

Q. When?

A. When these depredations had become very numerous; as near as I can remember about the middle of July, calling the attention of the detachment to the fact that many depredations were being committed, and that we must all exercise every effort to stop them.

Q. This was shortly before the special orders of patrols were

60 established?

A. Yes, sir.

Q. After the special patrol—after these special orders were given did you have them repeat them to you?

A. Yes, sir.

Q. Did John Dowd repeat them to you?

A. Yes, sir.

Q. Now, you may state whether the general instructions to the men from time to time is in their duties as soldiers and sentinels.

A. Yes, sir; when a recruit—all soldiers rather—to all soldiers are read the Articles of War as soon as they enter the service, and from time to time after drill instructions to recruits are given, which consist of such

instructions as are laid down in the drill regulations, physical instructions, and so forth; also every soldier is required to know the general orders and to repeat these orders before he goes on guard. He must know these general orders before he ever goes on guard. These instructions are not only given to recruits, but are given daily to all the soldiers of the garrison—they drill daily there getting instructions in the drill regulations. There are noncommissioned officers of schools for the noncommissioned officers. At these schools the noncommissioned
61 officers are required to recite lessons similar to recitations in any public school on matters of drill, guard duty, and first aid to the wounded in the hospital.

Q. Now, are all these instructions communicated to the men, and are they drilled in them by certain officers?

A. By officers and noncommissioned officers. The instructions to the men are usually given by the noncommissioned officers under the surveillance of the commissioned officers.

Q. You may state whether you by examination from time to time saw that the men were instructed as provided.

A. I did.

Q. You may state whether the book known as the Manual of Guard Duty is furnished to any of the noncommissioned officers.

A. It is. Every noncommissioned officer has a copy of the guard manual.

Q. And what are his instructions as to that?

A. He is to thoroughly acquaint himself with every detail of the guard manual so that if anything happens to any of his superior officers and they are disabled he can assume command.

Q. Now, you may state whether at the Allegheny Arsenal you saw that that was done.

A. Yes, sir.

Q. And you by personal examination of the men saw that it had been done?

A. Yes, sir.

Q. You may say as to Private Dowd whether you recollect
62 distinctly of him in that connection?

A. Yes, sir.

Q. Mr. Drury, I want to bring you down to September 10th, 1903, and I will ask you if anything unusual happened that morning?

A. Yes, sir; shortly before ten o'clock I received a message over the telephone that the stealing of copper was going on in the lower arsenal.

The COURT:

Q. What hour was that?

A. Shortly before ten o'clock in the morning.

By Mr. YOUNG:

Q. Did the message indicate where?

A. In the lower part of the Allegheny Arsenal.

Q. What did you do?

A. I immediately took steps to apprehend the thieves, calling Corporal Backus who happened to be passing by near my residence. I sent him to notify Sergeant Douglas who was then clerk and in headquarters build-

ing, and I directed Corporal Backus to proceed with Sergeant Douglas to his quarters and get their rifles, and to cross the arsenal ground to the rear of the hospital, passing through a gate which is in the hospital wall at that point on 39th street; thence down 39th street to the rail-
63 road gate near the corner of the arsenal wall and 39th street, there to delay until I myself would have time to come down the other side of the arsenal. I got my revolver and went to the arsenal gate at Butler street, taking Private Dowd, who was then sentinel and on duty, and also Private O'Keefe who was a member of the guard. We proceeded by way of Butler street to Almond alley. We took up double time upon arriving at Almond and proceeded at double time to the corner of Almond alley and Willow street, where I instructed Privates Dowd and O'Keefe to continue down Almond alley and thence towards the arsenal, and to arrest any persons or parties coming from the arsenal. I proceeded by way of Willow street.

Q. Your instructions were to go down Almond alley and thence towards the arsenal?

A. Yes, sir. I proce'ded by way of Willow street to 40th street; thence down 40th street to the corner of the arsenal. Upon arriving about, as near as I can remember, 100 feet from the lower end of 40th street I heard a shot fired. I drew my revolver, and as I arrived at the corner of what is known as Bonar's brass factory I halted two or three persons who came around that corner. My attention was immediately directed to the person who had been wounded, who was about to leave the corner of the lumber pile and walk towards me. I saw that this man was going towards Private Dowd and Private Dowd
64 towards the man. They met on the railroad tracks. About the middle of the tracks—I believe there are four tracks there—the man sunk down to the ground, and about as soon as he was lying on the ground I arrived and took down his trousers and located the wounds and grasped the wound with my left hand. I immediately directed Private O'Keefe, who was there, to telephone for medical assistance and to the West Penn Hospital for an ambulance. As I saw that the man who had been wounded was about to faint, I asked some bystanders to get some water, which was brought, and we bathed his face in cold water. I held the wound, stopping the flow of blood absolutely to the surface, until my hand became cramped, when I had to change my grip; and when I changed my grip I noticed that the blood spurted over my hand. I grasped the wound again and held it until the arrival, or about the time of the arrival, of the patrol wagon, which had somehow gotten word and had got there before the ambulance. I then placed a tournequet made of a handkerchief. Some one tied the knot for me; I only had one hand. I placed the knot immediately over the wound and drew it tight around his leg—as tightly as possible. The man was then delivered to the patrol wagon, which proceeded, I think, by way of Almond alley or 41st street; I am not sure. I then returned to the arsenal. On the way to the arsenal up 40th street, and about one-half way up, I met the ambu-
lance. It overtook the patrol wagon at some point which I
65 don't know.

Q. Do you know anything about that?

A. No; I don't know anything about that.

Q. Now, who was the man that was wounded?
A. William Crowley.
Q. Did you know him before that?
A. No, sir; never saw him.
Q. Had you ever heard of him?
A. No, sir.
Q. And how did you find out it was Crowley?
A. I heard the name spoken about as soon as I arrived at the scene; in fact, I think his grandfather or some relative arrived shortly and spoke the name.
Q. William Crowley?
A. Yes, sir.
Q. Can you tell us the time, the exact time as near as you can, that you received the message?
A. I think it was about 9.45 a. m., September 10th; shortly before ten o'clock.
Q. How long was it from that time until you started with Privates Dowd and O'Keefe?
A. I should say only five minutes.
Q. You may state how long it was from that time until you arrived at the railroad and heard the shot.
A. I should think it would take, judging the rate of speed I
66 travelled, from eight to ten minutes.
Q. And you would say the whole time from the time you received the message until you heard the shot was how long?
A. From 13 to 18 minutes; it might have been twenty minutes, perhaps.
Q. At the time you heard the shot did you see either Private Dowd or Crowley?
A. No, sir.
Q. Why couldn't you see them at that time?
A. Because Bonar's brass factory intervened.
Q. Now, you may state how you went down 40th street; just tell us how you went down 40th street, whether in the street or not.
A. As near as I can remember I went down the sidewalk. I am certain I went on the sidewalk most of the way.
Q. You directed Backus and Dowd how to proceed?
A. I directed Corporal Backus to go to headquarters building, and notified Private Dowd to go and get his gun and bring it back to Barracks No. 1; then to proceed across the arsenal to the rear of the hospital, taking a gate which is shown on this map, on 39th street, thence down 39th street to the railroad gate and there to delay until I could have time to go from my quarters to the guardhouse, take two men, proceed by way of Butler street through Almond alley to the lower side of the arsenal,
67 and for them to wait there until I could get around. I went from officers' quarters No. 1 to Butler street gate; thence along Butler street to Almond alley; down Almond alley to the corner of Willow street and myself by way of Willow street, 40th street, and the Allegheny Railroad tracks.
Q. Where were you when you heard the shot?
A. As near as I can remember about 100 feet up 40th street from

the railroad, which would be about opposite the brass factory of James Bonar and Company on 40th street. I continued down 40th street to the corner where I halted two or three persons who came around the corner; then I saw the person who was wounded coming toward Private Dowd.

Q. Where was the man at that time?

A. Near the corner of the lumber pile opposite Dubarry & Company's office.

Q. Where was Private Dowd?

A. I should judge near one of these switches located at another lumber pile.

Q. Which way was Crowley facing?

A. Towards me.

Q. And also toward Private Dowd?

A. Yes, sir.

Q. Was he moving or not?

A. I think when I first noticed him he had just taken one or two steps and was about to move.

68 By the COURT:

Q. Mark where Crowley was when you first saw him.

(Witness makes the mark C on map.)

Q. Where was Dowd?

(Witness makes the mark D on map.)

Q. That is where these men were when you first saw them?

A. Yes, sir.

By Mr. YOUNG:

Q. Then did they walk towards each other?

A. Yes, sir.

Q. And where did they meet?

A. I think it was between these two tracks [indicating point on map]. (Witness makes the mark "met.")

By the COURT:

Q. I understand that was after he heard the shot fired?

A. Yes, sir.

By Mr. YOUNG:

Q. When Crowley came to Dowd, what did Dowd do?

A. Dowd supported Crowley until—it was all done in two or three seconds—he supported Crowley until he began to sink down, and he eased him to the ground, and at the time I arrived the two men were together.

69 Q. Mr. Drury, did you find any evidence of any depredations having been committed that morning?

A. Yes, sir.

Q. What were they?

A. The copper plates on the smith shop, that is along the side of the smith shop, were rolled up and are still in that position. A piece of the down spout was found at the lower corner of the arsenal wall on the outside, and one piece on the inside near the corner of the wall.

Q. Did you notice whether anything had been removed or not?

A. Yes, sir.
Q. What?
A. Some of those plates.
Q. Where were those plates?
A. On the L of the smith shop, toward the Allegheny Valley Railroad tracks.
Q. On what part of the building?
A. On the roof.

Cross-examination by Mr. HAYMAKER:

Q. Mr. Dowd, have you those Army Regulations with you?
A. No, sir.
Q. Are they in your possession at the arsenal?
70 A. Yes, sir.
Q. What are they entitled?
A. Army Regulations.
Q. When did you become a commissioned officer?
A. October 17, 1902.
Q. And before that time you had been a private?
A. Yes, sir; also a corporal.
Q. And where were you located at the time you became a commissioned officer?
A. Fort Leavenworth, Kansas.
Q. You were sent to Pittsburgh when?
A. I left Fort Niagara December 22, arriving here at Pittsburgh about 7.30 a. m. December 23, 1902.
Q. You came here for what purpose?
A. To command the detachment at the Allegheny Arsenal.
Q. And that detachment consisted of twenty men at that time?
A. Yes, sir.
Q. And you immediately took charge?
A. Yes, sir; the detachment came with me. It came to relieve another detachment of another regiment that was going to the Phil/ip'ines.
Q. The detachment that came with you continued there until after the shooting of young Crowley?
A. No, sir.
Q. Did they change?
71 A. Yes, sir; there was a new detachment came July 6, 1902.
Q. How many men?
A. 20 men.
Q. What was the largest number of men you had there from January until September?
A. Excepting casuals, twenty.
Q. Was Dowd one of the new men that came there in July?
A. Yes, sir.
Q. He came with nineteen other men?
A. Yes, sir.
Q. They came from where?
A. Fort Niagara, New York.
Q. Do you know where Dowd was a resident of?

Cross-examination by Mr. HAYMAKER:

Q. Does that plan show all the buildings on the arsenal property?
A. No, sir.
Q. Does it show any of the buildings?
A. Yes, sir.
Q. What buildings does it show?
A. That [indicating] is a closet. I don't know what that was used for.
Q. You do not know the names of those buildings?
A. No, sir.
Q. Does your plan show the heighth of the buildings?
A. No, sir.
Q. Does it show all the streets surrounding the arsenal property?
A. Just this corner.
Q. What do you mean by this corner?
A. Corner of 40th street, at the intersection of the railroad tracks.
41 Q. Near this corner?
A. Yes, sir.

Mr. Young offers the plan in evidence.

Lieut. RALPH W. DRURY sworn.

By Mr. YOUNG. I desire to offer the deed of the United States to the arsenal property in evidence.

The COURT. Considered in evidence.

By Mr. YOUNG. We offer in evidence deed of William B. Costell and wife to the United States, dated April 24, 1814; recorded in Deed Book T, page . Also deed of Albert Fiske and wife to the United States, dated May 13, 1831, of record in the recorder's office, Allegheny
42 County, in Book T 2, being vol. 40, page 601. The first is for 30 acres; the second is for 6 acres, 2 rods, and 36 perches. Deed of Anthony Dravo and wife, June 8, 1833; recorded in the recorder's office of Allegheny County, Book V 2, vol. 135, page 136. Deed of William F. Hamilton and wife, dated November 26, 1836; recorded in the recorder's office, Allegheny County, in Book C , being vol. 52, page 480. Deed from Albert Fiske and wife, June 6, 1837; recorded in Book D 3, vol. 53, page 400. This last conveys 66.86 square feet of land. Deed of Philip Weisenberger et al. to the United States, dated September 14, 1867, and of record in the recorder's office for Allegheny County in Deed Book, vol. 218, page 396; conveys lots 1, 2, and 3 in the borough of Lawrencevill, containing 10,000 square feet. Also offer in evidence what might be a special act—the act of assembly of the Commonwealth of Pennsylvania of March 19, 1816, and also February 14, 1845—relating to this arsenal property.

43 RALPH W. DRURY, having been duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. Give your full name, Mr. Drury.
A. Ralph W. Drury.
Q. How old are you?
A. 29 years old.

Q. What is your rank in the United States Army?
A. Second Lieutenant.
Q. When were you commissioned?
A. October 17, 1902.
Q. Where were you stationed, September 10, 1903?
A. Allegheny Arsenal, Pennsylvania.
Q. You may state when you first entered the Army?
A. At West Point, New York, June 13, 1893.
Q. And you remained there how long?
A. Until June 13, 1895.
Q. How did you terminate your service at that time?
A. Resigned.
Q. When did you next enter the Army?
A. November 5, 1901.
Q. In what capacity?
A. Enlisted man.
Q. Where did you enlist?
A. Boston, Massachusetts.
44 Q. What regiment?
A. I was assigned to the 14th Infantry.
Q. Where were you stationed first?
A. Fort Snelling, Minnesota.
Q. How long did you remain there?
A. First of June, 1902.
Q. Where did you go then?
A. Fort Leavenworth, Kansas.
Q. What were your duties there?
A. I was undergoing instruction preparatory to examination for a commission.
Q. Where next?
A. Fort Niagara, New York.
Q. When did you take the examination?
A. The examination began September 1st, 1902.
Q. Then you were commissioned, when?
A. October 17, 1902, and assigned to the 9th Infantry and stationed at Fort Niagara, New York.
Q. When?
A. I arrived at Fort Niagara, New York, December 10th, 1902.
Q. Where did you go then?
A. Remained at Fort Niagara in New York until December 22, 1902. Left on the evening, arriving the next morning—that is, the morning of December 23, at the Allegheny Arsenal, Pa.
Q. What was the Allegheny Arsenal?
A. A military post of the United States.
Q. A post or a subpost?
A. A subpost, reported to Fort Niagara, New York.
45 Q. The superior officers resided at Fort Niagara?
A. Yes, sir.
Q. What was your official position at the Allegheny Arsenal?
A. Commanding a detachment at Allegheny Arsenal.
Q. In a general way what were your duties as commander?

A. A commanding officer is responsible for the discipline, drill, and the instruction, safety, and defense.

Q. Repeat that.

A. As commanding officer I was responsible for the discipline, safety, defense, drill, and instruction of the troop under my command, and for the preservation and proper application of public buildings and property.

Q. Now, were you required to make any report from time to time to your superior officers at Fort Niagara?

A. I reported to the commanding officer at Fort Niagara.

Q. That is, to the commander of your post?

A. Yes, sir.

Q. Now, you may state what number of men were in your detachment.

A. 20 enlisted men.

Q. And those men were from what regiment?

A. 9th U. S. Infantry.

Q. How many companies?

A. Three different companies.

Q. What were they?

A. A, C, and D.

Q. To what official, by name, did you report until September 10, 1903?

46 A. To Major Robertson, now Lieutenant-Colonel Robertson, U. S. Infantry.

Q. You may state whether you heard at any time of any depredations at the Allegheny Arsenal grounds and property.

A. Soon after my arrival I made the customary inspection a commanding officer makes, and continued those inspections once a month; that is required by the regulations.

Q. What did you discover?

A. I discovered that down spouts had been removed from some of the buildings.

Q. Repeat that.

A. I noticed on my first inspection that down spouts were missing from one building in particular.

Q. Just indicate on the map here which building.

A. Particularly on this building. [Witness indicates building opposite Willow street in the Arsenal grounds to the left, and also building opposite Willow street on the right.]

Q. What did you notice on the building to the left?

A. All the down spouts were gone. My attention was called to the fact particularly because the side towards Butler street is along the walk and in plain view of the walk which I constantly travelled from day to day.

47 Q. Now, the buildings on the right of Willow street known as the blacksmith shop—what did you notice there?

A. Nearly all the glass was gone and the down spouts were missing.

Q. Now, you noticed that when?

A. On my first inspection, which was immediately after taking command, December 31.

Q. I show you map marked "Exhibit 2," Mr. Drury, and ask you what that is?

A. Plan of the lower part of Allegheny Arsenal.

Q. By that you mean from Butler street to the river, and from 39th street to 40th, including everything on the right-hand side of 40th street going toward the river?

A. Including the building located on that side.

Q. Do you know by whom that was made?

A. By Lieut. Ralph W. Drury.

Q. By yourself?

A. Yes.

Q. Does it accurately represent the position of the buildings, the number of them, and the distances?

A. Yes, sir.

Q. Did you draw to a scale?

A. Yes, sir.

Mr. YOUNG. I offer this in evidence.

48 Q. When did you first notice in January when you made the inspection that there had been some depredation?

A. On the side of the carriage shop towards Butler street.

Q. And what did you notice there?

A. That the down spouts had been removed.

Q. What else did you notice at that time?

A. That the down spouts on the entire building were missing and a great deal of glass broken on this building near the street.

Q. Meaning the building marked carriage shop and machine shop?

A. Yes, sir.

Q. What else?

A. That the down spouts were gone and glass broken in the smith shop.

Q. Anyting else?

A. I also noticed a great deal of glass had been broken in all the buildings facing 39th street and 40th street.

Q. What else?

A. That is all at that time.

Q. After you had noticed that did any of your superior officers come to make an inspection?

A. Yes, sir; the commanding officer from Fort Niagara made monthly inspections of the Allegheny Arsenal.

Q. Who came out?

A. Major E. B. Robertson.

Q. When did he come?

49 A. Every month. The first inspection was made early in January, 1903.

Q. State whether you called his attention to these things.

A. I called Major Robertson's attention to the depredations that had been committed and requested his direction what should be done to prevent them.

Q. Did you receive any orders at that time from him?

A. Yes, sir.

Q. What were they?

A. To exercise the greatest vigilance and, if possible, to apprehend and arrest any persons who were committing these depredations.

Q. Now, you may state whether the depredations continued and when you next observed them.

A. I made frequent inspections of the arsenal and noticed that the depredations were continuing. The first I noticed they were continuing those depredations was on storehouse No. 2, on the side of the building towards the railroad. The down spouts had been removed since I arrived.

Q. You do not know whether they had been done before you came or not?

A. I knew they were not gone on my first inspection.

Q. Then, when you inspected the second time you found they had been removed since your former inspection?

A. Yes, sir.

50 Q. Any other things you noticed at that time?

A. I noticed the particular point at which depredations were committed was on warehouse No. 1; the corner spouts in the angle of the building next to the parade ground were missing. The down spouts had been removed.

Q. Now, anything else?

A. Not at that time.

Q. Did you call your superior officer's attention to that when he came there?

A. Yes, sir.

Q. Do you recollect the month when you noticed that?

A. February.

Q. What did he order you to do at that time?

A. Continue my efforts to learn who were committing these depredations and to make every effort to arrest them. From time to time between that and September 10th I noticed the depredations continued. I noticed they were continuing especially in the upper arsenal, in the upper magazine.

Q. The magazine north towards Penn avenue?

A. Yes, sir. An attempt had been made to pry the copper plates off the doors, but they were bolted there and were not easily removed, but all the tacks and nails and fastenings had been taken out.

Q. Go on and tell us if from time to time you noticed depredations on the arsenal property up to September 10th?

A. From time to time I noticed these depredations were con-

51 tinuing. The next I recall in mind was the hospital building and officers' quarters No. 3. It was then I made a special report to Major Robertson that I was unable to apprehend these depredators and asked for instructions.

Q. Now, at that time, what was the value of the property you think had been taken?

A. I reported to the War Department that I thought it would cost two thousand dollars to replace the stolen property.

Q. You say that the down spouts were gone at these different times; were they carried away?

A. Yes, sir.

Q. What was the nature of the metal—what was it?

A. Copper.

Q. Well, now, you say that at a certain time you reported to Major Robertson. What was that time?

A. I made reports every time Major Robertson inspected, and when these depredations began to be committed on the officers' quarters, that being so near, I reported that the force at the Allegheny Arsenal was insufficient to prevent the depredations, and asked for definite orders as to what to do.

Q. When was that?

A. This was in July, 1903, as near as I can recall.

Q. You may state whether Major Robertson at that time, as your superior officer, as commandant at Fort Niagara, went over the depredations, and so on, with you.

A. The commanding officer went over and made a thorough
52 inspection of the Allegheny Arsenal, as was his custom at all visits.

Q. What, if any, orders did he give you?

A. Major Robertson directed me to establish patrols—a patrol system, patrolling the lower arsenal every thirty minutes from nine o'clock in the evening until reveille.

Q. What time would that be?

A. Sunrise. Also to patrol during the daytime; to patrol the upper arsenal every tour—that is, once in every two hours—from reveille until nine o'clock at night, and to, if possible, apprehend and arrest any persons committing depredations on the arsenal property or trespassing thereon.

Q. You may what you did pursuant to those orders.

A. I ordered the commander of the guard to patrol the lower arsenal, starting from the gate, passing along the road to the right and along the barracks on the right of the arsenal.

Q. Now, Mr. Drury, just start that again and tell us the street and direction, next to what street, &c.

A. Starting from the arsenal gate on Butler street, taking the road on the side of the arsenal toward 40th street, and continuing down that road towards the river inside the arsenal, passing the headquarters building, to the lower part of the arsenal; examining the 40th and 39th street gates; returning by way of the steps near the officers' quarters No. 3, on the 39th street side of the arsenal, passing in the rear of the buildings on
53 that side of the arsenal and examining the gates which are located in the arsenal wall on that side of the street, and thence by the road on the 39th street side of the arsenal to the arsenal gate. This patrol to be made every thirty minutes during the daytime—that is, from reveille at nine o'clock—no, no; that is not right—from nine o'clock at night until reveille; and the day patrol was from reveille until nine o'clock at night, was to be of the upper arsenal. The sentry proceeded, following the road, passing by the stable in the upper arsenal, thence to the lower magazine and the reservoir, which was located just above the magazine, following a path on the 40th street side of the arsenal to the upper arsenal, which is near Penn avenue, and thence from there straight down through the grounds to the arsenal gate on Butler street.

Q. Now, do I understand you, Mr. Drury, that the sentinel on guard made these different tours?

A. Yes, sir.

Q. Which sentinel made these tours?

A. The sentinel on guard.

Q. How did it reach you?
A. Over the telephone.
Q. Didn't you know who was telephoning you?
A. No, sir.
Q. Have you learned since?
A. No, sir.
Q. Have you telephonic communication through the arsenal?
A. No, sir.
Q. You had a telephone where you were?
A. Yes, sir.
Q. Did that communicate with any other part of the arsenal?
A. No, sir; not that I know of.
Q. Then the information that came to you came from outside of the arsenal?
85 A. I can not say that.
Q. Well, could it have come from any place on the inside?
A. I don't know; in these days you can not tell.
Q. Well, so far as you know, where you were was the only telephone inside of the wall?
A. Yes, sir.
Q. That is the only phone in the arsenal?
A. There is no other phone that I know of inside of the arsenal.
Q. As soon as you got that message you went where?
A. On my porch and called Corporal Backus, who was then passing.
Q. And then you went according to the route you have already indicated?
A. Yes, sir.
Q. When did you see Dowd last before you heard the shot fired?
A. When we separated at the corner of Almond alley and Willow street.
Q. Did you give Dowd any specific instructions at that time?
A. I gave both Dowd and O'Keefe instructions to continue down the alley toward the railroad tracks; thence towards the Allegheny Arsenal and arrest any persons coming from the arsenal.
Q. Did you say anything as to how they should arrest them?
A. No, sir.
Q. You only said persons coming from the arsenal?
86 A. Yes; or coming out of the arsenal. I don't just remember the words I used. It may have been from the direction of the arsenal.
Q. Are you giving us the exact language of your instructions at that time? Suppose you repeat them.
A. You men continue down Almond alley to the railroad tracks and then along toward the arsenal and arrest all persons coming from the arsenal.
Q. Then they immediately left you?
A. Yes, sir.
Q. And which way did you go?
A. By way of Willow street to Fortieth.
Q. Did you travel rapidly or slowly?
A. About double time, 180 steps to the minutes.

Q. You were at what point when you heard the shot fired?
A. As near as I can remember, about 100 feet up Fortieth street from the tracks.
Q. When you gave your instructions to Dowd was he armed in any way?
A. Yes, sir.
Q. What did he have?
A. Magazine rifle, caliber No. 30; bayonet; bayonet scabbard, and ten rounds of ammunition.
Q. Is 30 a large caliber or small one?
87 A. Considered to be a small caliber, compared with the others; the regulation ball cartridge.
Q. What kind of a ball?
A. Lead; steel point.
Q. What they call a steel jacket?
A. Yes, sir.
Q. You mean that the steel is around part of the lead?
A. Yes, sir.
Q. It is a long ball?
A. Yes; it is a projectile.
Q. How long is the entire cartridge?
A. Two and one-half inches.
Q. That is made up of powder and ball?
A. Yes, sir.
Q. It is a very hard shooting gun?
A. No, sir; it is considered an easy shooting gun.
Q. It depends upon which end you are at, doesn't it?
A. Well, yes.
Q. I mean it is a very destructive gun in its operation?
A. Well, it is not to be destructive; it is to disable rather than to destroy.
Q. When you heard the shot fired you say you drew your revolver?
A. I think I had pulled it about that time; I think perhaps before that.
Q. Why did you pull it?
A. Well, because I saw a man fleeing from the arsenal.
88 Q. On the arsenal property?
A. Yes, sir.
Q. Outside of the wall?
A. Yes, sir.
Q. How far was he at that time?
A. About 200 feet.
Q. Running away from the arsenal?
A. Yes, sir.
Q. Running on the arsenal property?
A. Yes, sir.
Q. Well, that is open property?
A. Yes, sir; it is not surrounded by the wall.
Q. You say it belongs to the Government?
A. Yes, sir.
Q. It is between the tracks of the Allegheny Valley Railroad and the river?

A. Yes, sir. It is a dumping ground for ashes.
Q. How far did you have to travel until you saw Crowley and Dowd?
A. About 100 feet.
Q. What was between you and Crowley and Dowd at that time?
A. The building of Bonar and Company.
Q. Did you know at that time it was a short fired by one of your soldiers?
A. No, sir.
89 Q. Couldn't you tell by the report of the gun?
A. No, sir.
Q. Aren't you familiar with the report of your particular kind of firearms so that you could tell it was one of your arms that exploded?
A. No, sir.
Q. When the shot was fired did you travel more rapidly than you had been travelling before?
A. I think that would be the natural thing for me to do.
Q. Did you believe at that time that it was a shot fired by one of your men?
A. Yes, sir; I did.
Q. What was the first thing you saw, then, after the shot was fired?
A. The first thing I saw after arriving at the corner, you mean?
Q. Yes.
A. The first thing was two or three persons who came around the corner just as I arrived at the corner.
Q. By this time you were outside of the arsenal?
A. Yes, sir; and on the east side of Fortieth street.
Q. On the side opposite the arsenal property?
A. Yes, sir.
Q. How close were you to the wall of the arsenal when the shot was fired?
90 A. As near as I can remember I went down the sidewalk, which would be 70 feet from the wall.
Q. Did you stop any persons on your way down there to where the shot was fired?
A. At the corner, I judge, two or three came around the corner.
Q. Who were they?
A. I don't know.
Q. From which direction did they come?
A. They came to the corner about the same time I got there. They were coming from the east.
Q. That is, from the direction of Almond alley?
A. Yes, sir.
Q. And when you stopped them they were where?
A. At the corner of Bonar and Company's place.
Q. They were on what street?
A. I don't think they were on any street. There is no street there.
Q. What property is it?
A. I believe it belongs to Bonar & Company.
Q. Which way were these people coming when you stopped them?
A. They were coming towards me.
Q. Were they walking or running?

A. I believe they were at a smart gait.
Q. Were they going at that time to where the young person was who had been wounded?
91 A. No, sir; they were coming towards me.
Q. Did you know who they were?
A. No, sir.
Q. Were they all men?
A. Yes; as far as my remembrance goes.
Q. Don't you remember that one of them was a boy?
A. No, sir; I don't. My attention was immediately—instantly called to the man who was wounded.
Q. Well, when you stopped these men what did you stop them for?
A. I thought they were coming from my men, perhaps.
Q. From where your men were?
A. Yes, sir.
Q. Well, suppose they had been, why were you stopping them at that point?
A. Well, to inquire whether they were fleeing and interested in the case or not.
Q. How did you stop them?
A. Halted them.
Q. In what way?
A. By the command halt.
Q. Had you your revolver then?
A. I think so.
Q. Were those three men together?
A. Why, there were two or three right together there.
92 Q. All coming toward you at the same time?
A. Yes; the whole three were not separated by more than two or three feet.
Q. How did you have your revolver?
A. Raised pistol. [Indicating.]
Q. Did you point it toward them?
A. Raised pistol is pointed over a man's head.
Q. It would be pointed at some point over the men's heads?
A. Yes, sir.
Q. Did they explain where they had been?
A. Yes, sir.
Q. And upon a satisfactory explanation you let them go?
A. Yes, sir.
Q. Could you see either Crowley or Dowd at the time you stopped these men?
A. Yes, sir.
Q. How far away were they?
A. Crowley was about 100 feet; Dowd about 80 feet.
Q. Then you went up to where Crowley and Dowd were?
A. Yes, sir.
Q. Where was young Crowley when you saw him first?
A. Right near the lumber pile in front of Dubarry and Company's office.
Q. Was he upon the street or upon private property?

93 A. I believe that is the property of Dubarry and Company.

Q. How far was he from the Government property when you first saw him?

A. I don't know exactly.

Q. What is your best recollection?

A. I would say 150 feet.

Q. When you first saw him he had his face towards Dowd, did he?

A. Yes, sir.

Q. Was he walking when you first saw him?

A. Yes, sir; I think he was moving, and with his face toward the Government property.

Q. Did you see him when he was in any other position than with his face towards the Government property?

A. No, sir.

Q. Where was O'Keefe at that time?

A. At what time?

Q. At the time you saw young Crowley coming toward Dowd.

A. I didn't notice O'Keefe at that particular time.

Q. Did you see him after that?

A. Yes, sir.

Q. Where was he when you first saw him?

A. Beside Dowd and Crowley.

Q. Do you know from which direction he came?

A. Not from observation.

94 Q. From the time you first saw Crowley and Dowd until they came together, were they both travelling towards each other?

A. Yes, sir.

Q. Meeting at about what point?

A. About where I have indicated—50 or 60 feet from where I first saw Dowd. Crowley came, I think, a little more than one-half the distance.

Q. At the time Crowley was walking toward Dowd, did he indicate in any way that he had been wounded?

A. I don't just remember. He didn't walk as though he had been wounded.

Q. How fast did he walk?

A. He walked along at an average gait.

Q. How far were you when you heard the shot fired from the point where you saw Dowd first?

A. About 100 feet.

Q. Did you at any time, immediately before you heard the shot fired, heard anything that would indicate to you that there was going to be any trouble of any kind in that locality?

A. No, sir; I did not.

Q. You heard nothing that attracted your attention in that direction before you heard the shot fired?

A. No, sir.

Q. The shot then was a surprise to you?

95 A. Yes, sir.

Q. And it was the first thing that drew your attention to trouble in that quarter?

A. Yes, sir.

Q. Then I understand that before you heard the shot fired you heard no orders or talk by anybody in that neighborhood?

A. No, sir.

Q. Did you hear anyone make any exclamation when the shot was fired?

A. No, sir.

Q. Nor immediately before?

A. No, sir.

Q. You spoke of a special order with reference to the apprehension of people. Where did you get those special orders?

A. From Major Robertson.

Q. Now, what do you mean by those special orders?

A. Well, I don't understand what you mean by the question?

Q. You spoke of a special order that you had with reference to apprehending persons committing depredations on the arsenal property that you received from Major Robertson; is that right?

A. Yes, sir.

Q. That special order had reference to what?

A. To patrolling the arsenal grounds and arresting all persons committing depredations thereon.

96 Q. On the Government property?

A. Yes, sir.

Q. Where were you when you got that special order?

A. At the Allegheny Arsenal, Pa.

Q. Was Major Robertson there, too?

A. Yes, sir.

Q. Were those written special orders?

A. No, sir; they were verbal orders.

Q. And what were they?

A. You will establish a system of patrol, patrolling the lower arsenal every thirty minutes from nine o'clock at night until reveille in the morning, and the upper arsenal every two hours from reveille until nine o'clock at night. You will apprehend and arrest all persons, person, and parties, committing depredations on the Allegheny Arsenal.

Q. Was that the entire order?

A. As near as I can remember it; yes, sir.

Q. And was that the same order that you repeated to Dowd?

A. Yes, sir; except that I prescribed the limits of that patrol, and stated where it should be. That is, what we call the limits of a man's post, specified specifically where this patrol should go and what it should do.

Q. And what was Dowd to do?

A. He was to leave the gate at Butler street, proceed along the

97 road on the Fortieth street side, passing the headquarters building to the lower arsenal, observing the Fortieth street and Thirty-ninth street gates——

Q. But all inside of the arsenal property?

A. Yes, sir.

Q. When Major Robertson gave you those special orders did he read them from a book or simply give them to you verbally?

A. Verbally.

Q. And did you write them down anywhere?

A. No, sir.
Q. You simply delivered them to the others from memory?
A. Yes, sir.
Q. I believe you did not convey them to Dowd yourself?
A. No, sir.
Q. Who did that?
A. That was done through the noncommissioned officer of the guard—the commander of the guard. I saw that Dowd knew the order same as everybody else.
Q. Will you repeat them again, your order to Dowd and O'Keefe—your special orders?
A. Do you mean at the corner of Willow street and Almond alley?
Q. Whatever orders you gave them from the time you left them until this shooting occurred.
A. You men continue down the alley to the railroad tracks,
98 then toward the arsenal and arrest (I don't whether these are my exact words) all persons coming from the arsenal.
Q. This, of course, occurred, after you got the telephone message?
A. Yes, sir.
Q. Now, does that include all the instructions you gave them after you got the telephone message?
A. Well, not all. I described to the men what we were going out for—the object of the patrol. The Guard Manual gives you an idea of what a patrol is for, and this was one of the duties of the patrol. I explained to the patrol, as is customary, the object of taking them away from their post. I told them some thieves were stealing copper in the lower arsenal, and that we wanted to get them as they came out of the arsenal.
Q. You gave them no orders as to just how they should apprehend them when they caught them—how to arrest them?
A. Not at that time.
Q. Did you give them any instructions before that time as to how they should arrest a man for stealing?
A. Yes, sir.
Q. What were your instructions?
A. Whenever unauthorized persons come within the vicinity of a man's post he calls upon them to halt three times, and then he gives
99 them warning that if they don't halt he will fire. These instructions had been conveyed to all my men. Then if they did not halt to fire upon them.
Q. That is the method of getting possession of those persons who disobey the command halt?
A. Yes, sir.
Q. That, of course, means inside of the arsenal?
A. I don't think so; not necessarily.
Q. Well, you don't mean that you would halt any man outside of the arsenal property?
A. That would depend upon the circumstances.
Q. Suppose you discovered a man leaving the Government property, and you thought he had committed some depredation upon the property, you would order him to halt, and if he continued on you would halt him three times, and then warn him that if he did not halt you would fire, and then if he didn't halt you would shoot him?

A. Yes, sir; just as if a person was escaping from a house,
Q. You would shoot him then if he didn't stop?
A. Yes, sir.
Q. If he had committed theft?
A. Yes, sir.
Q. Or if he had committed depredations on any kind of Government property?
A. Yes, sir; I think so.
100 Q. Or if he was even trespassing upon the Government property, if he did not stop you would shoot him, would you?
A. Yes; if I had every reason to believe that the man had been committing depredations or theft.
Q. Well, you would do it?
A. If I had every reason——
Q. Suppose you answer my question?
(Question read at top of page.)
A. Yes, sir.
Q. Will you point out any section in the manual or in the Rules of War that authorise you to give such an order, or to shoot a man who has committed a trespass of some kind on the Government property?
A. Paragraph 218, Army Regulations, page 33, article 39. That places the responsibility of protecting Government property on a commanding officer.
Q. That is your authorization for shooting a man under the circumstances you have related?
A. I didn't say that. That gives you the responsibility of a commanding officer.
Q. Well, it is upon that article that you would base your right to shoot a man for having trespassed on the Government property if he refuses to halt after you had called upon him to do so three times?
101 A. From that article I get authority for commanding Allegheny Arsenal or any other post. The Guard Manual gives in detail how you should protect that property. Probably the Regulations give something also in addition to the paragraph I have referred to.
Q. Can you refer to any paragraph in any of your instructions that authorize you to shoot a man for committing trespass on Government property who refuses to halt after you have called him three times?
A. The general orders of a sentinel.
Q. I mean where do you find them?
A. Paragraph 215, Manual of Guard Duty.
Q. Well, it is upon that order that base your right to shoot a man if he refuses to halt?
A. That is a part of the authority.
Q. Now, where do you find the other part of your authority?
A. The instructions to that sentinel, the method that he shall use in halting all unauthorized persons.
Q. Can you refer to them in any way, as well as to all the authority that you can find authorizing you to order the shooting of a man who commits some trespass on the property of the Government?
A. Night orders for sentinels, page 40, paragraph 241, of the Book of Manual (which is read by witness).

A. I understand New York City.

Q. How soon after you came here did you first observe the depredations at the arsenal?

A. About one week.

Q. And what were the depredations that you then noticed?

A. The absence of down spouts on machine shop. The carriage shop and machine shop were all in one.

Q. By down spouts you mean the conductors that conduct the water from the roofs of the building to the sewer?

A. Yes, sir.

Q. How high was that building?

A. About 30 feet.

Q. And the down spouts were taken off how much of that?

72 A. All the down spouts had been removed.

Q. From the ground to the roof?

A. Yes, sir.

Q. And how many down spouts?

A. About 15 altogether.

Q. You, of course, did not know when they were taken away?

A. No, sir.

Q. Or under what circumstances they had been removed; and so far as your knowledge goes they might have been worn out and removed on that account?

A. Yes, sir.

Q. You say also that you noticed at that time some broken pains of glass; where were they?

A. In the machine shop, and carriage shop, and blacksmith shop.

Q. And how many pains of glass did you notice were broken at that time?

A. I never counted them; I should say 500.

Q. What size?

A. 9 by 10.

Q. Now, you did not know who broke those?

A. No, sir.

Q. Or under what circumstances they were broken?

A. No, sir.

Q. Nor do you know how long they had been broken before you came?

A. No, sir.

73 Q. The broken windows were in what buildings?

A. The carriage shop, machine shop, and smith shop; also on all of the buildings facing the streets—40th and 39th streets—also in the upper arsenal in the plant house.

Q. Now, take the first house that you mentioned—the carriage house—what was that being used for when you arrived there?

A. It was a vacant building.

Q. What was the machine shop being used for when you arrived?

A. Vacant building.

Q. So that all of these buildings that you first mentioned were vacant buildings, and you do not know for how long they had been vacant before you arrived?

A. No; not from personal observation; but I understand the property stored in those buildings was sold about July, 1901.

Q. Well, you do not know of your own knowledge?
A. No, sir.
Q. You say that some of the windows in the upper arsenal were broken. What do you mean by the upper arsenal?
A. That portion between Butler street and Penn avenue.
Q. Who occupied that part of the arsenal?
A. It was unoccupied at that time.
Q. It remained unoccupied ever since you arrived?
A. Yes, sir.
Q. And you do not know for how long those windows had been destroyed?
74 A. I knew some of them had been broken since my arrival.
Q. You do not know by whom?
A. No, sir.
Q. They were simply ordinary house pains that were broken?
A. Some were small, 7 by 9; others were larger, 14 by 17, or so on.
Q. Those windows were near the wall of the arsenal?
A. About 100 yards away. Those two buildings are 100 yards at least from either wall.
Q. Now, these were all the depredations that you knof of when you began to take the precautions to run down the people who were committing them?
A. Yes, sir.
Q. Those buildings that you spoke of that had been out of use had a general decay appearance, had they not?
A. Some of them.
Q. They had not been in good repair?
A. Yes, sir; until recently, I think.
Q. I mean when you arrived here; when you found those down spouts gone and some windows broken, the buildings themselves had a general appearance of want of attention?
A. So far as the glass was concerned, it was gone; otherwise the buildings were in good condition.
Q. You mean the walls?
A. Yes.
Q. The buildings did not have the appearance of having been
75 occupied lately?
A. No, sir.
Q. How long was it after you arrived until you began to take the necessary steps to apprehend the depredators?
A. You mean until those patrols were established?
Q. Yes.
A. About six months.
Q. And what depredations were committed in the meantime?
A. The removal of conductors and gutters and the breaking of glass.
Q. That is that continued after your arrival here?
A. Yes.
Q. What do you mean by gutters?
A. They are what are commonly known as eave troughs.
Q. You say you found some depredations of that kind after you came?
A. Yes, sir.

Q. As to conductors and down spouts, how many of those were destroyed after your arrival here?

A. I should say thirty or forty, perhaps fifty of them. I measured up 1,600 feet.

Q. And it was on that account that you began to take the precautions that you spoke of?

A. Yes, sir.

Q. Is there a wall around the arsenal the entire way with the
76 exception of where the gates are?

A. Yes, sir.

Q. What is the heighth of the wall?

A. The average heighth would 7 or 8 feet; about 8 feet.

Q. And were the gates locked at night?

A. Not the Butler street gate; all the others were.

Q. How many gates leading to the lower arsenal?

A. Nine gates.

Q. They were all closed at night as well as day, excepting the Butler street one, at which you had a sentinel on guard all the time?

A. Yes, sir. One particular gate on 39th street was broken open a number of times. That gate was discovered open quite often.

Q. The down spouts or conductors that you spoke of were the ordinary pipes used in conveying the water from the roof to the sewer?

A. Yes, sir.

Q. How were they made?

A. You mean what material was used?

Q. Yes.

A. I think the custom of to-day is to put on galvanized iron.

Q. What was the quality of these?

A. I believe they were copper.

Q. Do you know what they were?

A. Yes, sir.

77 Q. What were they?

A. Copper.

Q. Jointed in the usual way?

A. Yes, sir.

Q. Fastened to the building?

A. Yes, sir.

Q. How were they fastened to the building?

A. With circular pieces of iron, fastened to the building by a spike. That spike was driven into the walls of the building. I am not certain that the circular portion went entirely around or not.

Q. It went went one-half way at least?

A. Yes, sir.

Q. Then the copper pipes; did you mention some of those as having been taken away?

A. Yes, sir.

Q. And the panes of glass of which you spoke that were in the windows of the different buildings; at what time were they broken, so far as you know?

A. I don't know.

Q. The copper plates of which you spoke, where were they?

A. On the L of the smith shop, toward Butler street and the Allegheny Valley Railroad tracks.

Q. What were those plates used for?

78 A. To protect the roof from the elements—rain, snow, and ice. They were simply a part of the roof of that building.

Q. How were they fastened down?

A. Nailed down.

Q. You say you found some of those removed. Were they entirely gone or just rolled up?

A. Some were entirely gone and some rolled up.

Q. Did you find that to be the case on the entire roof or only in particular places on these buildings?

A. Only in particular places on this building, and on adjacent buildings the gutters were gone. I did not notice that they were gone at my early inspection. The gutters are gone on the foundry and on the lower side of the smith shop. In other places they were rolled up. I think that some of the plates had been removed.

Q. But you found some of them rolled up?

A. Yes; but whether they were taken or rolled up they belonged to the building.

Q. And before they could be taken from the building they would have to be detached in some way—be removed—the nails would have to be pried off of them?

A. Yes; they seemed to be whereever we found them removed.

Q. Did they appear to have been detached by some sort of force?

A. Yes; I noticed there had been prying around the corners of the eaves.

79 Q. I show you book marked "Exhibit No. 3," and ask what that book is?

A. Manual of Guard Duty for the United States Army.

Q. Was that the manual under which you were conducting the post at that time?

A. If that manual is up to date; yes, sir.

Q. I wish you would point out those sections with reference to the police regulations of the post; what do you mean by police regulations?

A. You want the general orders?

Q. Yes, sir.

A. Page 37, paragraph 215.

Q. Any other?

A. Yes; orders for sentinels on post; gives general instructions for the sentinels; continues on to orders for sentinels and night orders; orders to sentinels at the post of the guard; compliments from sentinels; compliments from guards; then takes up special orders, and so on.

Q. Well, is there anything in that manual with reference to the duty of the officers with reference to the apprehension of persons committing depredations about those buildings?

A. Not those particular buildings.

Q. Or any other property belonging to the Government?

A. Yes; I believe there are instructions here how to apprehend

80 people who have no authority to be on the property. The method by which they shall challenge them——

Q. Can you refer to that provision?
A. I can not just now. I could find it if I had time.
Q. Is there such a provision in that manual somewhere?
A. Yes, sir; I believe there is.
Q. Describing the method of taking possession of unauthorized persons on Government property?
A. Yes, sir.
Q. Is there any provision in that manual with reference to making the arrest of persons committing depredations on Government property?
A. Yes, sir.
Q. Are you able to refer to that?
A. This manual tells how to take possession of people.
Q. Well, whatever you call it, is there any provision with reference to taking the possession of people for violating the law?
(Witness examines book.)
A. Now, this guard manual does not contain the express provisions, but the army regulations, of which the manual is a part, do.
Q. Have you a copy of the Army Regulations?
A. Yes, sir.
Q. Can you refer to those provisions in the Army Regulations?
A. I think so.
81 Q. Tell me whether there is any provision or paragraph in the book you have in your hand in reference to the subject?
A. I believe there is, but I can not turn to it just now.
Q. I show you a book called the Army Regulations of the year 1901—are you familiar with that book?
A. Yes, sir.
Q. Is that the book containing the rules and regulations of the Army?
A. Not complete.
Q. Is there any provision in the Army Regulations contained in that book with reference to your duty in apprehending all persons committing depredations on Government property?
A. Yes, sir; paragraph 218, article 39, page 33, says——
Q. You need not repeat that.
Q. Is that the provision from which you get your authority to arrest or take possession of people?
A. That is one of the provisions.
Q. Now, can you refer to any other provisions?
A. I expect that there may be some detail ways given to go about the performance of such a duty, but a commanding officer of a post is allowed his discretion sometimes in the way in which he shall bring about results.
Q. You mean with reference to the taking possession of people who commit depredations on the Government property?
A. Yes, sir; on account of his general responsibility he has,
82 by virtue of his position, the right to use all methods and means which are given him to carry out the ideas of the War Department for the preservation and proper application of Government property.
Q. At the time you were at the arsenal when you were taking the precautions to apprehend people you caught committing depredations

there, were you acting upon any particular rule in the guard manual or were you simply using your discretion in the matter?

A. My education has been along lines of the profession of arms and my general knowledge of the general regulations and the branches of those regulations guide me in my control of this subpost.

Q. Can you refer to any of the rules and regulations that were adopted by the military with reference to that work that you had to do?

A. Not to that particular post.

Q. Well, to any post for the general guidance of all officers of the Army.

A. This book contains about 1,761 paragraphs, 123 articles of war, all of which bear upon an officer's duty in the Army; also, there are other manuals, and so forth, that one must familiarize himself with.

Q. How long had you been taking the precautions to arrest people for committing depredations before September 10th, 1903?

83 A. You mean how long before the patrol system was established?

Q. Yes; how long before September 10th, was that?

A. Efforts were constantly being made to apprehend the depredators, and eventually a patrol system was established about the middle of July, 1903.

Q. Was the patrol system established for this one purpose—that is, of arresting and taking possession of persons committing depredations on the arsenal property?

A. Yes, sir.

Q. Now, where is your authority for constituting that patrol duty?

A. Guard Manual.

Q. Can you refer to the provisions?

A. I believe so; page 70, paragraphs, 369, 370, and 371.

Q. How many men were engaged in the patrol?

A. One man at a time.

Q. And it was his business to patrol the entire inside of the arsenal property?

A. Yes, sir; at certain times the lower arsenal and at certain other times the upper arsenal.

Q. But you were paying particular attention to the lower arsenal?

A. Yes, sir.

Q. That system of patrol was established, you say, about what time in July?

A. About the middle of July; it may have been shortly after the middle.

84 Q. Were there any arrests made between the time you created that patrol service to the time young Crowley was killed?

A. No, sir.

Q. What time in the day did you first learn that there were some depredations being committed on the tenth of September?

A. About 9.45 a. m.

Q. Where were you?

A. In my residence, officers' quarters No. 1, Allegheny Arsenal, Pennsylvania.

Q. Who conveyed to you that information?

A. I don't know.

A. Yes, sir.

Q. Who was your commander of Allegheny Arsenal?

A. 2nd Lieutenant Ralph W. Drury.

Q. Do you know how long he had been there?

A. He had been in command of the detachment there from the first. I premise by saying the Allegheny Arsenal was made a subpost of Ft. Niagara on January 1, 1903. Lieutenant Drury was sent down prior to January 1st to receive the public property, so that the absolute transfer might be made on January 1st.

Q. What were your duties, Colonel, as to the Allegheny Arsenal, as to visiting and looking after the property?

A. I had the supervision that belongs to the commanding officer of a military post over the discipline, matter of command, the preservation and care of the public property, and of maintaining order on the reservation.

Q. In pursuance of that duty would you get to the Allegheny Arsenal—would you go there?

116 A. I did; I was ordered to make monthly visits to the Allegheny Arsenal for the purposes of discipline, command, etc., as I have stated.

Q. After Lieutenant Drury was placed in command did you visit the Allegheny Arsenal?

A. Yes, sir.

Q. Can you tell about how often you went?

A. At least once a month, beginning with January, 1903, until August, 1903. That was my last continuous visit. In September and October I was on duty service in the western part of the United States, and did not make the visits in those two months.

Q. Did you make them after that?

A. In November and December I made the visits.

Q. Lieutenant Drury would report to you?

A. Yes, sir.

Q. He was required to report to you?

A. Yes, sir; I was his superior officer.

Q. Do you recall whether he reported to you depredations at the arsenal property?

A. I do.

Q. When?

A. On my first visit, in January, 1903, Lieutenant Drury pointed out to me the condition of the various buildings at the Allegheny Arsenal.

117 Q. What did you find?

A. That certain parts of these buildings had been removed; down spouts and eve troughs were gone and windows were broken. I think that on every other visit from January up to and including August places were pointed out by Lieutenaut Drury where other depredations had been committed. Things had been taken from the buildings and more windows had been broken.

Q. Well, in pursuance of what you learned there and of what Lieutenant Drury reported to you what did you do?

A. I had given him orders on my first visit to use all the means in his power to protect the property placed in his immediate charge.

Q. Did you give him any special orders?

A. In July he pointed out other depredations. I think I visited here about the 10th of July—I am not sure of the day; it is a matter of official record in my office—and I then gave him orders to use his best endeavors to stop these depredations upon the property, and directed him to establish a patrol of the guard. Prior to that time, my recollection is that the inspection of the post at Allegheny Arsenal was made by an unarmed man; but in July I gave him instructions to send the sentinel of the guard on this patrol, and to, if possible, apprehend and arrest any person or persons committing depredations on the property—these
118 patrols to be made day and night.

Q. What, Colonel, are the duties of a commander, irrespective of any special orders, as to Government property?

A. The commander of a post is held responsible, and the duty devolves upon him by the regulations to instruct and maintain discipline in his command; to protect and preserve all public property; to prevent disorders of any kind on the public land under his charge, and to use such means as are given him by the Government to carry out his orders; use any force that is necessary in order to enforce discipline, keep order, and the preservation of the public property in his charge.

Q. Colonel, how long have you known Lieutenant Drury?

A. I can not fix the day exactly, but it was some time early in December, 1902, that he reported to me at Fort Niagara.

Q. And what has been his reputation?

(Objected to. Objection overruled.)

A. I can give his reputation as I know it as a subordinate of mine. It is excellent; a very careful, studious officer, very attentive to his duties, and from the promise that is shown by his short service, I think he will make a very excellent officer in the future.

Q. How long have you known Private Dowd in the service?

A. That I can not fix. I probably have known him since he
119 reported at Fort Niagara; but it is not general that a commanding officer of a four-company post composed of three hundred men will know each individual.

Cross-examination by Mr. HAYMAKER:

Q. Colonel, you came here first in January?

A. Yes, sir; in January, 1903.

Q. And the last visit was some time in——

A. December; I made a December visit. Then the post was taken away from me—it was made an independent post.

Q. How many visits did you make?

A. Between the first of January and December, ten times. Every month but September and October.

Q. During the time that you were here were the buildings repaired as to the down pipes and the gutters and roofing, and so forth, at any time?

A. Not that I know of.

Q. No reports were ever made that they were?

A. Not to my knowledge.

Q. Those buildings were in a state of dilapidation when Lieutenant Drury took charge, and had been for a long time?

A. I know nothing about that. They appeared so.

120 Q. How long have you known these Government buildings?

A. Since January, 1903. That was my first visit to Pittsburgh, to stop here.

Q. You say you gave the special orders to Lieutenant Drury with reference to maintaining order and apprehending people committing depredations there?

A. I did.

Q. Do you remember what those special orders were?

A. As I have stated, he was to establish patrols of the guard and use every effort to apprehend and arrest persons found committing depredations on the Government property.

Q. That was an oral order from you?

A. Yes, sir.

Q. And upon what was that based?

A. Upon my general authority as a commanding officer of the post.

Q. Is that based upon any written regulation?

A. Yes, sir.

Q. And can you refer to it?

A. I can point it out if I can have the book. Paragraph 218 in the Revised United States Army Regulations of 1901, page 33.

Q. Colonel, was it upon that paragraph that you based your instructions to Lieutenant Drury?

A. They were based on that paragraph and on the customs of

121 the service. There are such things recognized.

Q. Unwritten laws?

A. Unwritten laws. They are recognized by law.

Q. You were not there at the time of this shooting?

A. I was not. I was at Fort Niagara.

Q. Colonel, does the exercise of the authority that you gave Lieutenant Drury extend beyond and outside of the Government property?

A. Well, I have to suppose about that, and say what I think about it myself.

Q. Go ahead; you are an expert.

A. If a person who is committing a depredation on Government property is pursued by the person in the military service who is directed to apprehend that person, and the fleeing person does not stop, I believe the soldier has an absolute right to pursue beyond the limits of that regulation. That is of course an opinion. It is what I would do were the matter to come directly to me.

Q. You believe that if he had committed a depredation you would have the right to follow him any distance and apprehend him?

A. Yes, sir.

Q. And you could leave the Government property in your endeavor to apprehend him?

A. That is what I believe.

122 Q. Does that apply to any kind of a depredation that could be committed by the person you desired to apprehend?

A. I should so assume.

Q. Whether it was a felony, misdemeanor, or trespass?

A. I would act on that assumption that it was my right as the commanding officer to pursue and catch.

Q. If the party fleeing refused to surrender or halt, you would say you would have the right to shoot?

A. I would believe that.

Q. Now, upon what do you base that authority?

A. I base that on what I consider to be my duty to the United States, and that, while this paragraph of the regulations that I have referred to does not specify all the duties of a commanding officer—they are laid down in very general terms—yet a commanding officer is necessarily dependent upon his own judgment as to certain cases that may arise and that are not specifically defined. The commanding officer becomes responsible—he is necessarily responsible—for any orders that he may give in the performance of his military duty. He is responsible for the acts of his subordinates done in pursuance of his orders. If a commanding officer gives an illegal order he becomes responsible, but it is occasionally necessary to decide very quickly.

123 Q. Is there anything in the Manual or the Articles of War upon which you base that opinion?

A. I know of nothing in the Articles of War; yet the general requirements of the duties that an officer is bound to perform—the duties prescribed for his position by the Articles of War, which are statutory, and the regulations, which are based upon statute—give him that authority.

Q. Do you know anything in the Manual or the Articles of War or Army Regulations that support the position that you take, other than the articles to which you have referred?

A. I can not recall any now; but if I had time to study I might find some.

Q. But the one to which you refer is the one upon which you feel that you have a right to rely on, in your opinion?

A. Yes; I considered it entirely competent, and I believed I would be supported by my military superiors in an action of that character.

Q. What is the purpose of the Manual and the Articles of War and the Army Regulations?

A. I don't understand what you mean by the Manual?

Q. I mean the one that has been referred to.

A. That is a part of the United States Army Regulations. They are rules for the Army of the United States.

124 By the COURT:

Q. Promulgated by whom?

A. Promulgated by the Secretary of War pursuant to statute law. They are rules for the government of the United States Army.

Dr. WALTER C. MCCANDLESS, called on behalf of the United States, being duly sworn, testified as follows:

Q. You are a physician of the regular school?

A. Yes, sir.

Q. How many years have you been practicing?

A. Four and one-half years—a little more than four and one-half.

Q. Have you been attached to the West Penn Hospital?

A. I was for a time.

Q. Were you on September 10th, 1903?

A. No, sir.

Q. What official position did you hold as a physician in the county?

A. I was holding post-mortems for the coroner.

125 Q. You may state whether you were present at the post-mortem on the body of William Crowley, September 10th, 1903.

A. Yes, sir.

Q. You knew as part of the history of the case that he died during that evening?

A. Some time during the day.

Q. Now, what did you find as to where the bullet entered and where it came out in the body of Crowley?

A. It entered the back of the thigh, or rather just in the crease between the buttock and the thigh.

Q. How could you distinguish the wound of entrance and wound of exit?

A. There was a small round hole in the rear of the leg which was the wound of entrance; its characteristics were such. In the front of the thigh there was a long incision, about four inches long; at one point in that incision there was an irregular place; that, I judge, to be the point of exit, but the other I knew was the point of entrance.

Q. You have no doubt, then, that the bullet entered from behind and you have no doubt it came out in front?

A. It would have to.

Q. If the person that had been wounded had been facing the person that fired the shot could the bullet have entered the body at that point?

A. No.

126 Q. If the person that was wounded—Crowley—had been facing the soldier when the shot was fired could the bullet have entered the body in the way it did?

A. No, sir.

Cross-examination by Mr. HAYMAKER:

Q. Did you make the post-mortem?

A. Yes, sir.

Q. What was the course of the bullet from the time it entered the thigh to the point of exit?

A. Downward and forward.

Q. How much downward?

A. The drop was four inches from the wound of entrance and the wound of exit.

Q. Was the bone broken?

A. The bone was chipped, not broken through.

Q. Doctor, was there anything there that might have deflected the bullet?

A. The bone would be the only substance that might deflect it, and it did not.

Q. It did not?

A. No.

127 Q. What was the cause of death, Doctor, in this case?

A. Hemorrhage—external hemorrhage and shock; mostly hemorrhage.

Q. State whether or not the bullet entered about the center of the leg or thigh.

A. Yes; just before the thigh proper begins.
Q. Which leg, Doctor?
A. The right leg.
Q. And came out about the center of the thigh in front?
A. Yes, sir.
Q. Doctor, you made an examination of the vitals of the deceased?
A. Yes, sir; I did.
Q. And they were all in a normal healthy condition?
A. Yes, sir. The lungs were a little congested, but that is natural.
Q. And, so far as your examination went, he was a healthy, strong boy at the time of his death?
A. Yes, sir.
Q. Doctor, you say there was a hemorrhage?
A. Yes, sir. That was caused by the severance of the femoral artery.
Q. The severance of that artery is likely to produce death, is it?
A. Yes, sir.
Q. So that to shoot a man about the leg, or about that neighborhood about the thigh, is likely to cause death?
128 A. Yes; if the femoral artery is ruptured.
Q. Doctor, was that wound, that you call the entrance of the bullet, about the center of the leg, or was it toward the inside?
A. Well, it was more toward the outer than the inside.
Q. That is, the point of entrance?
A. Yes, sir.
Q. About how far, Doctor? Turn to the court and indicate.
(Witness indicates on his leg the point of entrance.)
Q. But where was the other wound—the point of exit?
A. About there. [Indicating to the court the point of exit.]

JOHN DOWD, one of the petitioners, being duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. How old are you, John?
A. 26 years of age.
Q. What is your occupation?
A. Soldier.
129 Q. In what?
A. In the United States Army.
Q. What regiment?
A. 9th United States Infantry.
Q. What company?
A. Company A.
Q. When did you first enlist as a soldier?
A. 5th day of August, 1899.
Q. Where?
A. New York City.
Q. What regiment were you assigned to?
A. I was assigned to the 35th U. S. Volunteer Regiment.
Q. Were you instructed and drilled after your enlistment?
A. Yes, sir.
Q. You may state whether or not you took the oath of a soldier.

A. I took the oath; yes, sir.
Q. Where did your regiment go and how soon after you enlisted?
A. We went on the 25th day of August to Fort Vancouver, Washington Territory, stayed there about a month, and then went to the Phillippine Islands. We land' in the Phillippines about the 8th of November, 1899.
Q. Then where?
A. Stayed there in the Phillippines until about March or April, 1901.
Q. Then what part of the Philippines were you in?
130 A. Northern Luzon.
Q. Were you in the Philippines at the time of the taking of Manila?
A. No, sir; shortly after.
Q. Where did you go in the island of Luzon?
A. Took a train up to San Fernardo; marched up through Santo Ceda, a distance of about seventy miles.
Q. And remained in that neighborhood how long?
A. About three weeks.
Q. And then where?
A. Then I went on an expedition with General Lawton up north.
Q. You went north with him, General Lawton?
A. Yes, sir.
Q. How long did you remain in Luzon altogether?
A. About fifteen months.
Q. When were you discharged?
A. The second day of May, 1901.
Q. When did you reenlist?
A. On the 28th day of August, 1902.
Q. What were you doing in the meantime?
A. I was a shipping clerk.
Q. Where?
A. New York City.
Q. For whom?
A. C. F. Wiley.
131 Q. What business?
A. Dry goods.
Q. You reenlisted in New York?
A. Yes, sir.
Q. And again took the oath?
A. Yes, sir.
Q. That includes the oath of obedience?
A. Yes, sir; to obey all orders.
Q. Where were you assigned then?
A. I was sent to Fort Niagara, New York, the 29th day of August, 1902.
Q. And how long did you remain there?
A. Until the morning of the 6th day of July, 1903.
Q. Then where did you go?
A. To Allegheny Arsenal.
Q. With what regiment?
A. The Ninth.

Q. What company of the Ninth?
A. Company A.
Q. What duty were you put on there?
A. I was detailed as a cook.
Q. And how long did you remain there a cook?
A. Well, from the 6th day of July until about the 5th of September, I should judge.
132 Q. When did you take up your regular duties as a soldier?
A. On the 6th day of September.
Q. Are you sure it was September, or was it August?
A. September.
Q. Had you during that time been instructed as a soldier and drilled?
A. Well, I didn't drill. Of course I knew my drill thoroughly.
Q. You were instructed?
A. Yes, sir.
Q. Now, when did you first learn that there were depredations going on about the Allegheny Arsenal grounds?
A. I heard it about the latter part of July, while I was cooking.
Q. Did you know about the establishing of the patrol?
A. Yes, sir.
Q. What is your recollection as to when that was established?
A. I think it was sometime in July; just when I couldn't say.
Q. Did you know the reason of that patrol?
A. Yes, sir.
Q. What was it?
A. On account of depredations being committed on the arsenal grounds.
Q. What was the patrol to do?
A. To arrest all persons seen on the reservation who were committing depredations.
133 Q. Who were performing that patrol?
A. The sentry on post.
Q. Do you know the route that he would take over the arsenal grounds?
A. Yes, sir.
Q. What was it?
A. At nighttime, after nine o'clock he left the main gate on Butler street going down through the grounds, keeping the buildings to the right?
Q. That would be Fortieth street?
A. Yes, sir. Then around by headquarters building No. 3, around by way of Thirty-ninth street, trying the gates at Thirty-ninth and Fortieth streets and back of the buildings on Thirty-ninth street, and up to the main gate. He did that every thirty minutes.
Q. When did you first go on guard duty?
A. September 6th, 1903.
Q. And did you receive any orders when you went on guard duty?
A. Yes, sir.
Q. What orders?
A. Why to patrol in the daytime from reveille until nine o'clock at night in the upper grounds once every two hours, and in the nighttime to patrol the lower arsenal from nine o'clock to reveille in the following morning.

102 By the COURT:

Q. That refers to night service entirely, I understand?

A. Yes, sir.

By Mr. HAYMAKER:

Q. What do you mean by a night sentinel?

A. A man who is on at night.

Q. Have you any order with reference to a day sentinel distinguishing his duty from that of a night sentinel?

A. I think not.

By the COURT. As the Guard Manual and other books will be offered in evidence I do not think it worth while to prolong this examination. The witness is at liberty later to point out any paragraph he may think would bear on this question.

Redirect examination by Mr. YOUNG:

Q. In the Manual of Guard Duty I want you to say on what class of duty a sentinel is?

A. On duties of the first class.

103 Q. And what is the first class as to how they should be armed—properly armed to carry out that duty?

A. He will always be armed to perform that duty with a magazine rifle, bayonet, bayonet scabbard, &c.

Q. Was Dowd armed that way that morning?

A. Yes, sir.

Q. He was on guard duty?

A. Yes, sir.

Q. Was O'Keefe armed that way, too?

A. Yes, sir.

Q. And Backus?

A. No, sir. He was armed for this special patrol duty.

Q. For that duty he was armed according to the regulations?

A. Yes, sir.

Q. I want to ask you if at the time the shot was fired you gave any command to fire?

A. No, sir.

Q. You did not see the soldier when he fired?

A. No, sir.

Q. Nor the person whom was wounded?

A. No, sir.

Q. You did not see him until after the shot was fired?

A. No, sir.

104 Dr. J. W. MCFARLANE, called by the United States and sworn.

Direct examination by Mr. YOUNG:

Q. You are a physician of the regular school?

A. Yes, sir.

Q. Where is your office?

A. Westinghouse Building.

Q. Are you connected with the West Penn Hospital?

A. I am a surgeon there.

Q. Do you know William Crowley?
A. I did. That is, I saw him at the time of the shooting.
Q. Where did you first see him on the 10th of September, 1903?
A. I first saw him on the patrol wagon going into the city.
Q. Were you present when he was removed from the patrol wagon to the ambulance?
A. Yes, sir.
Q. Where was it?
A. It was on 44th street.
Q. Did you accompany the ambulance to the hospital?
A. I did.
Q. You were in the ambulance with Crowley?
A. Yes, sir.
Q. When you arrived at the hospital what was done with him?
A. He was placed on the table and prepared for the operation.
105 Q. Stripped of all his clothing?
A. Yes, sir.
Q. You then dressed the wound?
A. We dressed the wound before that?
Q. Where was the wound?
A. The wound was in the left leg.
Q. How did the bullet enter the leg?
A. It entered in the back and came out in front just above the crease in the buttock—coming out in the front part of the thigh.
Q. How much lower was it in front than in the back?
A. Well, it was considerably lower.
Q. About how much?
A. About 2½ inches, probably.
Q. You say now, Doctor, that it entered behind and came out in front and a little lower in front than behind?
A. Yes, sir.
Q. What would that indicate to you as a surgeon as to the position of the man as to the person who fired the shot?
A. That he was moving away from him.
Q. Could it have been inflicted if the man had been facing the person who fired the shot?
A. No, sir. Besides, I have other knowledge that he was not.
Q. What is that?
106 A. Why, the man told me himself that he was fleeing from the soldier when he was shot and that after he was shot he turned and walked toward the man until he sank down upon the ground?
Q. What was the condition of the wound when you saw it?
A. Blood was oozing from it. It was dressed with a tourniquet—that is, a handkerchief had been knotted and placed tight around the leg.
Q. Had it kept back the blood?
A. Yes, sir; in a way, not entirely.
Q. It was done as well as ordinarily could be done?
A. Yes, sir.
Q. That is what you call first aid to the wounded?
A. Yes, sir.
Q. Then what did you do?

A. Why, when we got him to the hospital, we had been giving him liquor, etc., and surrounded him by hot bottles and elevated the foot of the bed, pending Dr. Howarth's arrival.

Q. Who was Dr. Howarth?

A. He was the surgeon on duty. I was called there by the United States authorities at the Allegheny Arsenal and was awaiting Dr. Howarth's arrival.

Q. And nothing was done for Crowley in the meantime?

A. He was not in a condition then to do anything for; everything that could be done had been done.

107 Q. Now, when Dr. Howarth came what did you do?

A. I turned Crowley over to Dr. Howarth, the surgeon on duty, and then left.

Q. You were not there when the operation was made?

A. No, sir; all I did was to place a rubber band around the wounded leg, convey Crowley to the proper place for the operation, and administer the stimulants.

Q. Were you present at the post-mortem?

A. No, sir.

Cross-examination by Mr. HAYMAKER:

X Q. Where were you, Dr., when you first heard of the shooting?

A. I was at Thirty-second street. I had been calling on Mr. Ward, a friend of mine, at the corner of Thirty-second street and Penn avenue, and just as I was about to leave there a call came to go to the Allegheny Arsenal.

X Q. A call at Mr. Ward's office?

A. Yes, sir.

X Q. How did they know you were there?

A. I told them at the house I was going there.

X Q. At your own house?

A. Yes, sir.

X Q. Then they telephoned from the Allegheny Arsenal to your house and then back to Mr. Ward's?

A. I suppose so.

X Q. How old, about, was young Crowley?

A. He looked to me to be 19 or 20.

108 Q. About what weight, Doctor?

A. I suppose in the neighborhood of 135 to 140 pounds.

Q. How tall do you think he was?

A. I suppose about 5 feet 8, 8½, or 9 inches.

Q. You know nothing about the general course of the bullet after entering the hip or thigh, do you?

A. I just know the wound of entrance and the wound of exit?

Q. How do you know that, Doctor?

A. It bears the general characteristics.

Q. What were the characteristics of this wound that indicated to you the points of entrance and exit?

A. The wound of entrance was circular, just like a punch, while the wound of exit was a tear, like a slit, and particles protruded from it.

Q. Was there much lasceration of the flesh externally?

A. No, sir; not very much. I could just judge from the man's condition and attending circumstances that the vessel had been cut.

Q. Doctor, I wish you would indicate again about where the bullet entered the body as near as you can.

A. In the crease in the hip here [indicating]. Just about the point of the hip, just as the buttock begins, making the exit in the front of the thigh here about 2 inches below this fold here [indicating], which we call Pupart's ligament.

Q. You say, Doctor, at the time the shot was fired, at the time
109 the ball struck this man, that he was running; do you know that from anything other than from what he told you?

A. Well, he told me he was fleeing.

Q. That is the only way you knew it?

A. Yes, sir.

Q. You testified that the man who was shot could not have been facing the soldier at the time the shot was fired; how do you know that?

A. The surgical evidence showed the shot was fired from behind.

Q. You were not present at the surgical operation, were you?

A. No, sir.

Q. Were you present when there was any surgical operation performed?

A. No, sir; I was not.

Q. Did the place of the wound in the rear and in front indicate that the man's leg was lifted when he was shot?

A. (Witness doesn't answer.)

Dr. HOWARTH called by the United States and sworn.

Examined in chief by Mr. MILLER:

110 Q. What is your full name, Doctor?

A. E. B. Howarth.

Q. You are a practicing physician?

A. Yes, sir.

Q. And you have been how long?

A. 21 years.

Q. You live in Pittsburgh?

A. Yes, sir; at 145 N. Craig st.

Q. Were you in any way connected with the West Penn Hospital on the 10th day of September, 1903?

A. I was.

Q. Do you remember when this young man Crowley was brought in?

A. Yes, sir.

Q. What, if any, were your duties toward him?

A. Well, he was brought in about the time I usually arrive there in the morning, between 10 and 11 o'clock on the morning of September 10th. I came in and found him on the operating table in the operating room, suffering from a gunshot wound in the upper part of the thigh.

Q. Do you know which thigh it was?

A. I think it was the left.

Q. Are you able to tell, Doctor, the points of entrance and exit?

A. As near as I can recollect, the bullet entered the thigh at the fold between the swell of the buttock and the commencement of the thigh proper.

111 Q. Where did it come out?

A. The wound of exit was about three inches below what we term Pupart's ligament, corresponding very closely to the fold in the front of the thigh, between the thigh and the commencement of the abdomen.

Q. About three inches below that line?

A. Yes, sir.

Q. How could you tell, Doctor, the point of entrance and point of exit?

A. Well, the point of entrance usually has a punched-out appearance, perfectly round, and the tissues seem to be indriven, whereas the point of exit was a larger aperature and torn with the tissues protruding. Then we could tell the direction of the bullet from the conditions found present on going down in order to locate the artery.

Q. And was that the direction of the bullet—from the rear to the front of the leg?

A. Yes, sir; we found that to be the direction—from behind forward.

Q. Could you tell from your examination of the wound the position the thigh or leg was in at the time the shot was fired?

A. Well, I should think the leg was perpendicular to the body at that time; it might have been slightly bent, but it would be hard to say.

Q. Would it indicate that the leg was lifted?

112 A. Well, very slightly, if any.

Cross-examination by Mr. HAYMAKER:

Q. Doctor, did you assist in the post-mortem?

A. I did not.

Q. Then you only saw the wound on the outside of the leg?

A. No; I operated on the case and opened the thigh and tied the vessels.

Q. In operating, Doctor, how far did you open the thigh?

A. I opened the thigh to an extent that would reveal the femoral artery and other vessels that were severed by the bullet. I suppose it would be a distance of two inches at least in depth from the surface.

Q. When did Crowley die?

A. Crowley died sometime in the afternoon or evening of the same day.

Q. Did he die from the gunshot wound?

A. He died from the effects of the gunshot wound.

Q. Did you assist in the post-mortem at all, Doctor?

A. No, sir.

Q. And what produced death?

A. I should judge it was hemorrhage and shock.

Q. Do you know whether the bone of the leg was broken or not?

A. Yes; it was shattered. There were particles of bone carried out almost to the exit of the wound.

113 Q. And, Doctor, the striking of the bone, the shattering of the bone, might have had some influence upon the direction of the bullet?

A. It seemed to be a rather direct line. The bone did not deflect the bullet very much.

Q. The bullet had a general downward course from the time it entered the leg until it reached the point of exit?
A. No; it was rather otherwise, horizontal.
Q. It had a rather slight downward inclination?
A. Yes, sir.
Q. That was so slight that it would be difficult to tell the exact position of the leg at the time the shot struck?
A. Exactly.

By Mr. MILLER:

Q. Doctor, were you there when the clothing was taken off the man who was hurt?
A. Yes; we removed all his clothing before operating on him.
Q. Did you examine the contents of the clothing?
A. No.
Q. Did you hear anything said by Crowley?
A. Nothing more than that he said he was running away.

By Mr. HAYMAKER:

Q. As to the entrance of the bullet, I wish you would say whether it was directly in the center of the leg or toward the side.
114 A. It was very near the center line.
Q. Of a line running up and down?
A. Yes, sir.
Q. And the point of exit was about at the same point?
A. Yes, sir.

Major E. B. ROBERTSON called by the United States and examined in chief by Mr. Miller.

Q. You are a colonel in the Regular Army?
A. Lieutenant-colonel.
Q. Where are you stationed?
A. At Ft. Niagara, N. Y.
Q. How long have you been there?
A. Since the 2nd of July, 1902.
Q. How long have you been in the United States Army?
A. Well, it is between 33 and 34 years.
Q. Where did you get your education?
A. My military education?
Q. Yes.
A. Originally at West Point, since then in the Army.
Q. When were you graduated from West Point?
A. I was graduated at West Point in 1874.
Q. Have you been in the service ever since your graduation?
A. Always.
115 Q. Were you located at Ft. Niagara on the 10th of September of last year?
A. I was.
Q. And what were your duties?
A. Commanding officer of Ft. Niagara and the subpost Allegheny Arsenal.
Q. Allegheny Arsenal at that time was a subpost of Ft. Niagara?

Q. Just indicate where he was when he was seven feet away from you. (Witness indicates on map where Crowley was.)
Q. You had come from Almond alley to that point?
A. Yes, sir.
Q. By way of the railroad track?
A. No, sir.
Q. On what?
A. There is sort of a gravel walk alongside those buildings. [Pointing.]
Q. And you came down between the railroad tracks and those buildings?
A. Yes, sir.
Q. And from what direction did Crowley appear to be coming?
A. I saw him come around that corner.
Q. That is, around the corner from Fortieth street?
A. Yes, sir.
Q. Why could you not see him before he got within seven feet of you?
A. I was too close to the buildings.
148 Q. You were too close to the buildings?
A. I was.
Q. Could you tell whether he came out of 40th street or not?
A. I couldn't tell whether or not he came out of 40th street, only that he was at the foot of the street.
Q. Which way was he traveling as to you when you first saw him?
A. He was coming towards me.
Q. Directly towards you?
A. Yes, sir. After he saw me he cut across the railroad tracks.
Q. Were you ever any nearer to him than when you first saw him?
A. No, sir.
Q. How far did you follow him after you first saw him until you fired the shot?
A. 30 yards.
Q. How far was he away from you when you fired the shot?
A. About the same distance.
Q. About 30 yards?
A. Yes, sir.
Q. When you first saw him and he started across the railroad tracks was he running or walking?
A. Running.
Q. And did you run when he started across the railroad tracks?
A. I ran as fast as I could.
Q. Were there any other parties with Crowley when you first ran onto him?
149 A. Yes, sir.
Q. How many?
A. Two others.
Q. Do you know who they were?
A. No, sir.
Q. Have you seen them since?
A. I don't know; I might have seen them.
Q. Have you any recollection of having seen them since?
A. Well, there were some men at the court-martial who claimed they were with him.

Q. Were they before the coroner, too?
A. I don't believe so.
Q. Did you identify any of these men at the court-martial?
A. No, sir.
Q. Were any of the men that were with Crowley at the time you saw him at the court-martial?
A. They said they were with Crowley. I don't know whether they were or not; I wasn't able to identify them.
Q. Crowley, you say, when you fired the shot was about to disappear between the two lumber piles?
A. Yes, sir.
Q. How high were the lumber piles on each side?
A. About three feet.
Q. And how wide was that opening between the lumber piles?
A. About two and one-half feet, I should say.
150 Q. Where did that opening between the lumber piles lead to?
A. I believe it led to the office.

By the COURT:

Q. To what office?
A. To the office of the lumber company.

By Mr. HAYMAKER:

Q. State whether or not there were many buildings beyond the openings in the lumber pile.
A. I don't believe there were any other buildings than the office.
Q. The rest of the neighborhood was open?
A. I believe so.
Q. Down to the river?
A. Yes, sir.
Q. Had you ever been there before?
A. No, sir.
Q. Then had he gone through the lumber piles he would simply have appeared out in the open at the other end?
A. That I couldn't say.
Q. He would simply have gone around the end of the lumber pile?
A. I thought perhaps he might take up towards the river, and there were other lumber piles there.
Q. Three feet high, you say?
151 A. Yes, sir.
Q. That is where the opening was?
A. Yes, sir.
Q. Was it higher away from the opening?
A. I believe it was.
Q. Not sure about that?
A. Yes; there was one high pile there, I should say.
Q. Where was that?
A. That was up from the opening.
Q. Well, how far from the opening?
A. Ten or fifteen feet.
Q. At the time you were following Crowley when he started to cross the railroad track were you running or walking?

A. When I followed him I ran.
Q. Were you running or walking when you fired the shot?
A. When I fired the shot I stood still.
Q. You had been running up to the time when you fired?
A. Yes, sir.
Q. And you stopped to fire the shot?
A. Yes, sir.
Q. When you fired the shot you were standing still?
A. Yes, sir.
Q. And he was doing what?
A. Running.
Q. And about 30 feet from you?
152 A. 30 yards.
Q. How far was he from the Government property when you fired the shot?
A. Well, I don't think he was quite 100 yards.
Q. When you first ran onto Crowley you did not know exactly where he came from?
A. No; I didn't know exactly where he came from.
Q. And he did come from the direction of the mouth of 40th street?
A. Yes, sir.
Q. He had nothing in his possession that would indicate he had come from the arsenal?
A. Well, I couldn't say if he did or not. He didn't have any property in his possession when I saw him. He only had his hat in his hand.
Q. There was nothing in his possession that would lead you to believe he came from the Government property?
A. He didn't have anything in his hand.
Q. And he came from what is an open street; is that right?
A. Yes, sir.
Q. Were the others that were with him going in the same direction that he was?
A. No, sir; they kept straight on up towards the railroad tracks.
Q. When you ran onto them did they appear to be with Crowley?
153 A. No, sir.
Q. When had they separated from Crowley?
A. Right after they met us.
Q. When you fired the shot you say you shot low so as to disable.
A. Yes, sir.
Q. And did you hit him where you expected to?
A. No, sir; I didn't.
Q. How many times did you shoot?
A. Once.
Q. What effect did your shot have on him as soon as it was made—did he fall?
A. No, sir.
Q. Did he stop?
A. No, sir.
Q. How far did he run after you fired the shot?
A. After he was hit he walked five or six paces.
Q. He was running when you fired the shot?

A. Yes; and then dropped into a walk.
Q. And he walked five or six paces?
A. Yes, sir.
Q. Did you load again?
A. No, sir.
Q. Did you run after you fired the shot toward him?
A. No, sir; I walked.
154 Q. Did you know you had struck him before you fired the shot?
A. No, sir; not until he turned around.
Q. Were you going to still pursue him?
A. Yes, sir.
Q. How did you know you had struck him when he turned around?
A. Seen the blood coming out of his pants.
Q. When did you load your gun?
A. On the last warning.
Q. When he came to you you found nothing in his possession?
A. I didn't search him.
Q. There was nothing whatever on him so far as you know?
A. I don't know, sir.
Q. When you fired the shot you did not know whether he had committed any depredations at all, did you?
A. I didn't know exactly, but I had a suspicion on it.
Q. You had no knowledge whatever at the time you fired the shot that he had committed any depredations?
A. No, sir.
Q. You had no knowledge that he had been on the Government property when you fired the shot?
A. I saw nothing in his possession.
Q. Or nothing in the possession of the other men?
A. No, sir; they were running too fast.
Q. You saw nothing in the possession of any one of them?
155 A. Well, no.
Q. They were all close to you; the others were as close to you as Crowley?
A. Yes; seven feet.
Q. Mr. Dowd, in what ward of the city of Pittsburgh is the arsenal located?
A. Situated between the 15th and 17th wards.
Q. That is a populous part of the city, around the arsenal?
A. I believe so.
Q. Built up on all sides of the arsenal except the Butler street side, isn't it?
A. Yes; and the railroad.
Q. People coming and going all the time?
A. Yes, sir.
Q. And the streets are occupied almost continuously by people of one kind or another?
A. Yes, sir.
Q. And the railroad is also used by the public frequently?
A. I believe so.

By Mr. YOUNG:

Q. Had you ever been down Fortieth street before that day?

A. No, sir.

Q. Had you ever been along the railroad tracks before that day?

A. No, sir; not below 43rd street.

156 Q. Had you ever been down on 39th street?

A. No, sir.

Q. John, I want to ask you why you shot?

A. Being ordered by Lieutenant Drury to arrest all persons coming from the arsenal and seeing that this party of men were running away my suspicion was on them that they were coming from the arsenal. Then, when I halted them four or five times I thought sure they had come from the arsenal. Then I warned them twice—this man I followed—that if he didn't halt I would fire upon him.

Q. That confirmed your suspicion, did it?

A. Yes, sir; I believed he came from the arsenal wall.

By the COURT:

Q. You say you halted him; what do you mean by that?

A. I called for him to stop.

By Mr. HAYMAKER:

Q. What were the words you used when you halted him?

A. "Halt."

Q. Any other word?

A. Yes, sir.

Q. What word?

A. "Halt, or I will fire."

Q. Did you say "Halt, or I will fire" every time?

A. No, sir.

157 Q. You first hallooed "halt" how many times?

A. At least four or five times.

Q. Then afterwards you said, "Halt, or I will fire?"

A. Yes, sir; twice.

Q. In a loud tone of voice?

A. Yes; very loud.

Q. So that you could easily have been heard a square away?

A. Yes, sir.

Q. Lieutenant Drury told you to arrest anybody coming from the arsenal?

A. Yes, sir.

Q. And you were carrying out his orders?

A. I was.

Q. But you did not know where young Crowley was coming from at all?

A. My suspicion was that he came from the arsenal wall.

Q. But you didn't know?

A. Not positive.

Q. He was not coming from the wall when you saw him?

A. He was coming from that direction.

Q. Yes; coming out of 40th street, and you didn't see him until you were within seven feet of him?

A. About seven feet.
Q. And you hadn't the opportunity of knowing where he came from?
A. Couldn't see very well on account of the buildings being in
158 my way.
Q. Was he on the sidewalk?
A. No, sir; he was in the middle of the street.
Q. And where were you at the time?
A. Almost on the corner.
Q. And how could he be in the street and you on the corner and you only seven feet from him—how wide is the sidewalk there?
A. I don't know; never measured it.
Q. Well, as near as you can remember?
A. Well, it seemed to be about 12 or 15 feet wide; I couldn't tell.
Q. How wide is the street over there?
A. I couldn't tell you.
Q. Isn't it fifty feet wide there?
A. I couldn't tell you.
Q. Didn't you say that Fortieth street was 70 feet wide?
A. No, sir.
Q. Now, don't you know that the order to "Halt, or I will fire" only applies to a condition of warfare?
A. No, sir.
Q. You say that that applies to cases of ordinary trespass?
A. Yes, sir.
Q. And out on the street?
A. Yes, anywhere; wherever I am posted by my superior officer; wherever I am sent by my superior officer.
Q. Whether it be on a public street or public property or not?
159 A. Yes, sir.
Q. So that if you were sent any place by your superior officer to apprehend a man, no matter how far it was from the Government property, and he refused to halt under the circumstances you would feel justified in shooting him as a last resort?
A. Yes, sir.

W. D. FAIRCHILDS, recalled.

Direct examination by Mr. :

Q. Mr. Fairchilds, your attention was called to the fact that there was a telephone pole on the arsenal grounds near the corner of Fortieth street that you had not put on the map; did you go out and locate that pole?
A. Yes, sir; I located it this morning.
Q. Will you indicate on the map where it should be.
(Mr. Fairchilds corrects Map No. 1 by putting telephone pole near Fortieth street and the railroad.)

160 Tuesday. U. S. v. Alleg. Co. Drury case. Feb. 23/04.

PATRICK O'KEEFE, called on behalf of the United States, being duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. How old are you?
A. I will be thirty-four next December.

Q. Where were you born?
A. I was born in Auburn, New York.
Q. What is your business at the present time?
A. Soldier.
Q. What regiment?
A. 9th Regiment, Company C.
Q. When did you first enlist?
A. May 3, 1898.
Q. Where?
A. At Portland, Oregon.
Q. To what regiment were you assigned?
A. 14th Infantry.
Q. United States Infantry?
A. United States Infantry.
Q. Regular, of course?
A. Regular.
161 Q. Where did you go?
A. We went down to Vancouver Barracks, Washington.
Q. How long did you stay there?
A. Stayed there about one month?
Q. Then where?
A. Proceeded to San Francisco, California.
Q. How long were you there?
A. About two weeks.
Q. Then where?
A. Manila.
Q. Arriving at Manilla when?
A. June 30th.
Q. You were present, were you, at the attack on Manila?
A. Yes, sir.
Q. And that occurred about when?
A. That occurred on the 13th of August.
Q. How long were you engaged there?
A. Well, we moved out about six o'clock in the morning, and we got into Malata, I guess, about seven o'clock in the evening; and we were stationed along in Malata thoroughfares—along the streets, they call them here.
Q. The different streets of Manila?
A. Yes, sir.
Q. Until when?
162 A. For about three days.
Q. Then where did you go?
A. We went back to Malata Barracks and did general, regular guard duty.
Q. For how long?
A. Up until the following January.
Q. Then what?
A. I was attached to Light Battery D of the Sixth Artillery, United States.
Q. Where did you go with the battery?
A. Well, we went out to the Malata Fort on the 20th of January, and

we stayed there until the 6th of February, and from there we went over to Klukon, and we established a fort there that they called Fort Arthur, and we stayed there then until the 25th of March.

Q. This was all in the island of Luzon, wasn't it?

A. Yes, sir.

Q. And you had service there how long?

A. I had service there a little over fourteen months?

Q. And did that include guard duty?

A. Yes, sir.

Q. And some fighting?

A. Yes, sir.

163 Q. And traveling over the island of Luzon?

A. Yes, sir.

Q. When did you leave the island of Luzon?

A. I left the island on the 7th of September, 1899.

Q. And where did you go?

A. After leaving there we landed at Nagasago, Japan; and then after leaving there we left for San Francisco, California.

Q. Where were you in California?

A. Well, I stayed in San Francisco for about one week, and then went home to Philadelphia.

Q. Had your term of service expired?

A. Yes; I was discharged then.

Q. How long did you remain out of service?

A. I remained out about ten months and sixteen days.

Q. What were you doing then?

A. I was working in the Baltimore Locomotive works in Philadelphia.

Q. Then you reenlisted where?

A. I reenlisted in the Heavy Artillery, 4th Hamilton, N. Y. I served three years there, and I was discharged, and reenlisted.

Q. During your service in the artillery, were you in Ft. Hamilton all the time?

A. Yes, sir.

164 Q. Then you reenlisted and went where?

A. I enlisted on the 9th of June, 1903, for Ft. Niagara.

Q. Where did you enlist?

A. At New York.

Q. And were assigned?

A. To the 9th of Ft. Niagara.

Q. And when did you come to the Allegheny Arsenal?

A. On the 6th of July, 1903.

Q. When did you enlist?

A. In June.

Q. And came down to the Allegheny Arsenal on the 6th of July?

A. Yes, sir; with a detachment of twenty men.

Q. After you were enlisted I suppose you were instructed in the duties of a soldier?

A. Yes, sir.

Q. And when you came to the Allegheny Arsenal here, were you then on guard duty for a time?

A. I think the 10th of July was the first guard duty I did. We arrived here on the evening of the 6th.

134 By the COURT:

Q. Do you mean inside the arsenal wall?

A. Yes, sir; inside.

By Mr. YOUNG:

Q. What were your special instructions?

A. To halt everyone on the reservation in the lower grounds and to put them under arrest and turn them over to the corporal of the guard. If they didn't halt to halt them three times and then warn them that if they did not stop you would fire on them.

Q. Did you receive general instructions as to what you were to do in case they did not halt?

A. Yes, sir; halt them about three times; then warn them twice, and to fire upon them if they didn't halt.

Q. You had in addition to that your general orders?

A. Yes, sir.

Q. The general orders briefly are what?

A. My general orders are to take charge of this post——

Q. Well, I guess you need not repeat that. They are just as they are printed in the book?

A. Yes, sir.

Q. You were required to commit those general orders to memory?

A. Yes, sir.

Q. And those are standing orders?

135 A. Yes, sir.

Q. And these other instructions as to patrolling, to arrest, and so on were special orders?

A. Yes, sir.

Q. And your special orders were given to you by whom?

A. By the preceding sentry who I relieved.

Q. In the presence of whom?

A. In the presence of the corporal of the guard.

Q. Known as whom?

A. The commander of the guard.

Q. Do you recollect the sentry that first gave you those special orders?

A. No; I don't.

Q. Are you sure you received them?

A. Yes, sir.

Q. And when you went off guard duty did you repeat them?

A. Yes, sir.

Q. To whom?

A. The next sentry who took my place.

Q. In the presence of whom?

A. The commander of the guard.

Q. And about how often were you on guard?

A. That was my first guard duty at the Allegheny Arsenal. That was the first guard duty I did.

Q. How often were you on then after that until the shooting

136 occurred?

A. The next time I was on guard the shooting occurred.

Q. That is, on the morning of the tenth day of September?

A. Yes, sir.

Q. Now, on the morning of the tenth day of September did you receive those same special orders from your predecessor on guard and you did not get a chance to repeat them at all until after the shooting?

A. No, sir.

Q. How long had you been on guard when the shooting occurred?

A. It occurred during my first tour.

Q. First tour of guard?

A. Yes, sir.

Q. Did Lieutenant Drury examine you as to these special orders and general orders from time to time?

A. He examined me the night of the 6th of September.

Q. Did you repeat to him your general orders?

A. Yes, sir; general and special orders.

Q. Did you repeat the special orders you have testified to here?

A. Yes, sir.

Q. Coming down now to September 10th, about what time did you go on duty as sentinel that morning?

A. 9 o'clock.

Q. And you received special orders when you went on?

137 A. Yes, sir.

Q. From your predecessor?

A. Yes, sir.

Q. And were you required that morning to repeat your general orders?

A. No, sir; not before the shooting.

Q. Now, was there anything unusual occurred that morning?

A. Nothing until Lieutenant Drury came to me.

Q. That was about what time?

A. It was about a quarter to ten.

Q. And who was to follow you upon guard duty?

A. Private Necker.

Q. And who followed him?

A. Private O'Keefe.

Q. And where Private Necker and Private O'Keefe?

A. Private O'Keefe was there at the guard house.

Q. Is the guard house at the gate on Butler street?

A. Yes, sir.

Q. And he was there waiting his turn?

A. Yes, sir.

Q. Do you know who preceded you?

A. Private Jones.

Q. What did Lieutenant Drury say to you?

A. He told me to come with him.

Q. What did he do then?

138 A. He then turned around and seeing Private O'Keefe there told him to come, and also to close the gate.

Q. Now, how were you armed at that time?

A. U. S. magazine rifle, caliber .30, bayonet, scabbard, 10 rounds of ammunition.

Q. What kind of a cartridge?

A. Ball cartridge.

Q. Was that the way you were armed for that duty?

A. Yes, sir.

Q. Did he tell Private O'Keefe in your hearing to get his gun?
A. Yes, sir.
Q. What did he say to Private O'Keefe?
A. "Private O'Keefe, you come too, and close the gate."
Q. How was Private O'Keefe armed?
A. The same as I was.
Q. Now, describe your course; how did you go?
A. Well, we were about abreast of each other. I was on the outside near the curb. We walked up Butler street to Almond alley. When we got to Almond alley Lieutenant Drury gave command to double time. I believe he did say there was some thieving going on. We doubled time down to Willow street. Then we sort of slacked up there and he told us to continue on double time to the railroad track and arrest the men coming from the arsenal.
Q. Which way did he go?
139 A. Lieutenant Drury went down Willow street and O'Keefe and myself continued on double time down towards the railroad track, down Almond alley towards the railroad track. We hugged the buildings on our left going down towards the railroad track. When we got within a few feet of the corner there was a party of men came running from the direction of the arsenal wall. It surprised us, they came on us so quick. I called halt, and seeing they wouldn't halt, I followed one of the men, called upon him to halt four or five times as I was running along. I then called to him to halt or that I would fire, and he was just about to escape behind the lumber pile when I loaded my piece and fired upon him. I aimed low with the intention of maiming him.
Q. What did he do then?
A. After the shot was fired he still continued to walk. He walked right ahead four or five paces and then turned around to the right and came towards me and I walked towards him. As we both got to each other he said, "What did you want to do that for?" I said, "Why didn't you halt?" I saw he was getting weak, and I called Private O'Keefe to help me and I laid him down on the track, and just as I got up from bending over him I turned towards Fortieth street and Lieutenant Drury was coming from around the corner with a revolver in his hand. I then turned him over to Lieutenant Drury, stayed around there about
140 five minutes on the outside of the crowd which had collected and then went back to the arsenal and continued walking my post until properly relieved.
Q. You were on sentry duty when you were taken by Drury?
A. Yes, sir.
Q. And as soon as you had turned the wounded man over to Drury you returned to your post?
A. Yes, sir.
Q. Now, I want you to say again how many times you called halt?
A. Four or five times.
Q. In what tone of voice?
A. I don't understand what you mean.
Q. What tone of voice as to volume? Did you call loud?
A. Yes, sir; you could hear me a square or two away.
Q. How often did you give the warning, Halt, or I will fire?
A. Twice.

Q. Where was he when you fired, as to the lumber pile?
A. He was almost a foot and a half from the lumber pile.
Q. Was there an opening there?
A. Yes, sir.
Q. Just indicate on the map where he was when you fired on him. Mark where Crowley was when you fired?
(Witness marks C and his own name, Dowd.)
141 Q. Where were when you fired?
(Witness makes mark on first track near lumber pile and marks it Dowd.)
Q. Where is the opening that you said you thought he would escape into?
(Witness makes a mark X.)
Q. Right where you have marked the X Dowd, near the opening between the lumber piles?
A. Yes, sir.
Q. Did you find out the name of the man that was shot?
A. I did that night.
Q. What name was it?
A. Crowley.
Q. Did you know him before that time?
A. No, sir.
Q. Did you ever hear of him?
A. No, sir.
Q. Did you receive any command to fire from Drury at the time you fired?
A. No, sir.
Q. Was he within your sight, so far as you know?
A. No, sir.
Q. Or hearing?
A. No, sir.

142 Cross-examination by Mr. HAYMAKER:

Q. What was your business or occupation before you joined the military?
A. I was working in a printing office.
Q. How long had you been in the printing office?
A. Almost three years, I guess.
Q. How long were you out of the military service after first joining?
A. A little over a year.
Q. And what post did you first join after you had been out of the service for a short time?
A. Fort Niagara, New York.
Q. And from Fort Niagara you came here?
A. Yes, sir.
Q. Arriving here in what month?
A. On the 6th day of July, 1903.
Q. And from the 6th day of July until the 6th day of September you were a cook?
A. Yes, sir.
Q. When were you first put on duty?

A. September 6th.
Q. It was to do what?
A. Guard duty.
143 Q. With instructions as to what?
A. With instructions to take care of the Government buildings.
Q. In what way were you to take care of them?
A. Well, not allow anyone to take anything out of them or off them, and to prevent any depredations on the Government property.
Q. Were you on sentry duty through the day or at night?
A. I was on duty day and night on the day of the 6th.
Q. And were you on duty day and night during that time up until the tenth of September?
A. No, sir.
Q. How late at night were you on duty?
A. Well, you go on duty at nine o'clock in the morning and are relieved at nine o'clock the next morning.
Q. Weren't you relieved occasionally?
A. Yes; you are relieved every two hours.
Q. You have four hours off and two hours on?
A. Yes, sir.
Q. Now, on this particular morning, when Lieutenant Drury called you, what did he say he wanted you for?
A. Well, he didn't say anything; just told me to come with him.
Q. Did you have your arms with you at that time?
A. Yes, sir.
Q. And you went where?
144 A. Up Butler street to Almond alley——
Q. Rapidly?
A. We walked up to Almond alley.
Q. You had no idea what you were wanted for?
A. Well, while we were running down Almond alley he spoke of some one stealing from the arsenal.
Q. And how many of you were together?
A. Three, with Lieutenant Drury.
Q. Two, and Lieutenant Drury?
A. Yes, sir.
Q. Now, where did the first conversation take place between you and Lieutenant Drury?
A. Well, the conversation wasn't directed towards me alone.
Q. Well, where were you when you received any instructions?
A. Well, as we were going down Almond alley——
Q. How far had you traveled?
A. About 150 to 200 yards.
Q. Well, now, what did he say to you?
A. Said some one was stealing from the arsenal.
Q. Did he say what you were to do?
A. I don't think he said anything more.
Q. Well, where did you go then?
A. We continued on double time down to Willow street, and separated there.
145 Q. You separated there, did you?

A. Yes, sir.
Q. Lieutenant Drury going which way?
A. Down Willow street.
Q. Alone?
A. Yes, sir.
Q. You going down Almond alley?
A. Yes, sir.
Q. Now, you have given all the instructions you received from the time he first took you until he separated from you?
A. No, sir. That is not all the instructions he gave me. He said arrest the men coming from the arsenal wall.
Q. Where were you when he told you that?
A. Foot of Willow street.
Q. Just before you separated?
A. Yes, sir.
Q. What did he say?
A. Arrest all men that were coming from the arsenal.
Q. Did he say anything as to what they might have been doing in the arsenal?
A. While we were running down Almond alley he said some one was stealing.
Q. Were you to understand that you were to arrest anyone that came from the arsenal buildings?
A. Yes, sir.
146 Q. Was that all he said on the subject?
A. Yes, sir.
Q. When he left you at Willow street, which direction did you go?
A. Down towards the railroad tracks.
Q. When you separated, of course you were in the Government property?
A. Yes, sir.
Q. How far were you from the Government property when you separated?
A. About 100 yards.
Q. Then you traveled down what street?
A. Almond alley.
Q. I suppose you took to the alley because you thought there would be more secrecy about it than going down the public street?
A. Yes, sir.
Q. How far did you travel after you left Drury until you saw young Crowley?
A. About 150 yards, I should say.
Q. And were you still on Almond alley when you saw him?
A. No, sir; almost on the corner of Fortieth street and the railroad track.
Q. How far was Crowley from you when you first saw him?
A. When I first saw him—about seven feet.
147 Q. Which way was Crowley going?
A. Up towards Almond alley.
Q. He was on what street?
A. Railroad tracks.

Q. And what is the speed of that double step; do you know?

A. I guess to get down there quick; get down as quick as you could.

Q. I know, but have you any way of knowing what distance you could cover in a certain time by that step?

A. No, sir.

179 Q. And when Drury met you, was he keeping up the double step, too?

A. I don't know; I don't think he did.

Q. Did he walk away from you? Did he start off with the double step?

A. Yes, sir.

Q. And you came down Almond alley at the same step that Lieut. Drury started with when he went down the other way?

A. As soon as he left us he turned down Willow street and we kept on the double time down to the railroad.

Q. And you kept the double time down that Almond alley?

A. Yes, sir.

Q. When you got down Almond alley to the edge of the buildings, was Dowd with you then?

A. Yes; he was on my right.

Q. Then you turned to the river?

A. Towards the railroad, or towards the arsenal grounds, on the railroad.

Q. Along what were you traveling after you left Almond alley?

A. Well, there were some brick pavements—we kept along—there are a few brick pavements there and we kept along them. Some places there were no brick pavements and we kept close to the buildings.

180 Q. That is, private buildings?

A. Yes; towards 40th street.

Q. You were, of course, off the Government property then?

A. Yes, sir.

Q. And you were still keeping up your quick movements?

A. Yes, sir.

Q. When you got down to the corner of 40th street and the open space between the buildings and the railroad you met three men.

A. Yes, sir; three or four men, coming right out of 40th street.

Q. Were you and Private Dowd together all the time?

A. Yes, sir.

Q. Traveling along side by side?

A. Yes, sir.

Q. How close were you to the corner when you saw the three men?

A. I judge it would be about five feet.

Q. And they seemed to be coming from where?

A. As far as I could see, from the arsenal grounds. They came right across the corner right quick.

Q. How far are the arsenal grounds from the corner?

A. Well, I judge it would be about sixty feet.

Q. When you saw them first they apparently were coming out of 40th street?

181 A. Well, I don't think they could be coming. They come out of 40th street from right next the arsenal grounds, right on 40th street.

Q. I know, but they came apparently directly out of the mouth of 40th street?

A. If they come out of 40th street, right straight down 40th street, they couldn't turn that corner so quick.

Q. I know, but didn't they seem to come down 40th street just as much as they came from the arsenal?

A. Yes, sir.

Q. They turned the corner of 40th street, didn't they?

A. Well, they come right from that opening there.

Q. If you traveled back the way from which they seemed to be coming you would travel right back to 40th street, wouldn't you?

A. Yes, sir.

Q. When you got within five feet of them you were standing where?

Mr. YOUNG. He didn't say five feet.

Mr. HAYMAKER:

Q. Did you say you were within five feet of them?

A. Five feet off of 40th street.

182 Q. Where were the three men?

A. They were coming down out of 40th street.

Q. Were they on the pavement or out in the street?

A. I couldn't say that, because we were right there and they was right around the corner.

Q. Was around the corner towards you or towards the railroad track?

A. Towards the railroad track.

Q. And you don't know whether they were out in the middle of 40th street or on the sidewalk?

A. No, sir.

Q. Why weren't you able to tell that?

A. We couldn't see it, because I kept close up to the buildings.

Q. You were hugging the buildings?

A. Yes, sir; and Private Dowd was on my right.

Q. And you were within five feet of 40th street when you saw them, and couldn't state whether they were on the pavement or out in the middle of 40th street?

A. No, sir.

Q. Why couldn't you tell that?

A. Because I couldn't see.

Q. Why couldn't you see that?

A. We were not looking for the pavement; we were looking for the men coming from the arsenal.

183 Q. How close were you to them when you first saw them?

A. About five feet, I think; around the corner.

Q. How far were you from the three men when you first saw them?

A. About five feet.

Q. Had they come past the corner before you saw them?

A. Sir?

Q. Had they come around the corner before you saw them?

A. Yes, sir.

Q. What kind of a building is there on the corner of 40th street?

A. A red brick building.

Q. You were keeping close to that building?

A. Yes, sir.
Q. Where was your gun during this time?
A. I had my gun in my hand.
Q. And Dowd had his?
A. Yes, sir.
Q. In what position were you holding it?
A. I had mine between the lower sight and the bolt.
Q. Carrying it down or elevated?
A. Carrying it down.
Q. And how was Dowd carrying his gun?
A. I didn't take notice to that.

184 Q. When you saw the men did you change the position of your gun?

A. Yes; I just grabbed the gun this way and kept following them up the railroad track.

Q. When you ran into the three men were they going rapidly or slowly?

A. They came along on 40th street pretty rapidly.
Q. How rapidly? Any more rapidly than you were traveling?
A. Yes, sir.
Q. Were the three men together?
A. No, sir; they separated.
Q. I mean when you saw them first, were they together?
A. They came right around the corner.
Q. Together?
A. Yes; three or four men; I can't say which.
Q. Then the three men separated?
A. Yes, sir.
Q. Which way did the two men go which you followed?
A. They kept between the buildings and the railroad track.
Q. And the other man crossed the railroad track?
A. I don't know which way he took at all.
Q. You don't know?
A. No, sir; I didn't keep my eye on him; I was keeping my eye on the two men I was following.

185 Q. Did the two men that you were following run or walk after you started after them?

A. They ran.

Q. How soon did you speak to them after the two men separated from the third man?

A. As soon as they passed us.
Q. And how far were the two men from you when you halted them?
A. I guess about five feet.

Q. Were they directly in front of you—I mean, were you behind them looking up 41st street?

A. Yes; and I kept up a run.
Q. When did you first order them to stop?
A. I halted them; I hallo'ed "Halt."
Q. How many times?

A. Well, I hallo'ed "Halt, halt;" I says, "Halt" once, and "If you don't halt I will fire." I says, "Stop or I will fire on you," again, like that.

Q. And that was all within a very short space of time?
A. Yes, sir.
Q. Then they kept on running and you kept running?
A. Yes; kept following them up toward 41st street.
Q. Where were you when you first noticed the women and children?
A. Right on the corner of Almond alley; there is a kind of fence to some mill there.

186 Q. That was some time after you had been hallo'ing to "halt?"
A. Yes; I kept hallo'ing to halt all the time I kept running up after them.
Q. Did you know then where Dowd was?
A. No, sir.
Q. Had you any idea where Dowd was?
A. No, sir.
Q. You couldn't tell where he was?
A. No, sir.
Q. You didn't know whether he was following his man or not?
A. No, sir.
Q. If he had been following, you didn't know where he was?
A. No, sir.
Q. You didn't have any intimation in any way as to where Dowd and his man were?
A. No, sir.
Q. How far were you from the railroad track when you heard the shot fired?
A. Well, I was just about a few feet.
Q. You were a few feet?
A. Right at the corner of Almond alley and the railroad track; I was on this side.
Q. How far did you follow the men from the corner of 40th street—how far did you follow your two men?

187 A. I followed them, I guess, about 65 feet.
Q. Where were your men when you last saw them?
A. I don't know where they went.
Q. When you heard the shot fired, you immediately turned around and abandoned the pursuit of your men?
A. Yes, sir.
Q. Did you know any one of the three men?
A. No, sir.
Q. You had never seen them before?
A. No, sir.
Q. Either one of them?
A. No, sir.
Q. And you had no positive knowledge where they came from when they came around the corner?
A. No, sir.
Q. You saw nothing in their possession or in their hands to indicate to you that they had been committing any depredations?
A. No, sir.
Q. Is there a sidewalk on 40th street?
A. On which side? On the arsenal side?

Q. Well, on both sides. Is there a sidewalk on both sides of 40th street?

188 A. I believe there is one from that shop—brick paved.

Q. Is there a sidewalk on the arsenal side of 40th street?

A. No, sir; there is a curb, you know, where the street is supposed to be; there is a curb that has been laid along on both sides, but as to pavement, there ain't none on the arsenal side.

Q. There is a line of buildings from Butler street to the railroad on the side opposite the arsenal?

A. Sir?

Q. There is a line of buildings from Butler street to 40th street? I mean to the railroad on 40th street.

By the COURT. Opposite the arsenal, on the other side.

A. Yes, sir.

Mr. HAYMAKER:

Q. There is a thickly populated portion of the city all around the arsenal except on the railroad side?

A. Yes, sir.

Q. And the streets are constantly used by people, young and old?

A. Yes, sir.

Q. You say you saw some women and children on 41st street?

A. Yes, sir.

189 Q. Where did they come from?

A. I don't know where they were coming from.

Q. Were they standing still?

A. No; it appeared like they were walking across the railroad track.

Q. You don't know where they came from?

A. No, sir.

Q. How many of them?

A. Well, I couldn't say that.

Q. You were close to them, weren't you?

A. No; I guess they were about 75 feet away from where I was.

Redirect examination by Mr. YOUNG:

Q. You came what time in July?

A. The 6th of July.

Q. Had you been on 40th street?

A. I have been down there several times since the day of the shooting.

Q. No; but before?

A. No, sir.

Q. From the time you came until the 10th of September, you hadn't been on 40th street?

A. No, sir.

190 Q. Had you been down the railroad tracks?

A. I had been down on the railroad tracks, but I went down 43rd street.

Q. Had you been down on the railroad tracks between 43rd and 39th streets?

A. No, sir.

Q. Had you ever been down on 39th street?

A. No, sir.

Q. When you were pursuing your men and before you heard the shot, did you hear any sound from Dowd?
A. No, sir.
Q. You didn't?
A. No, sir.
Q. You were following the other men?
A. Yes, sir.
Q. Did you hear any command from Dowd?
A. Oh, from Dowd, yes; I didn't know what you meant. I heard Dowd hallo'ing "halt" when I was calling "halt."
Q. You heard him hallo'ing "halt" when you were hallo'ing "halt?"
A. Yes, sir.
Q. Your reason for not shooting, you say, was because you were afraid you would hit these women and children as they came out?
A. Miss my men and hit some of the women and children.
191 Q. And you had heard the shot just before that?
A. Yes, sir.

Mr. HAYMAKER:

Q. Otherwise you would have fired, would you?
A. Yes, sir.
Q. Why?
A. Because I think the men was guilty.
Q. Guilty of what?
A. Of stealing from the arsenal.
Q. Stealing what?
A. Stealing copper.
Q. What copper?
A. We heard, of course, it was copper; I didn't know what he was stealing.
Q. You thought he was guilty at the time?
A. Yes, sir.
Q. Guilty of stealing copper from whom?
A. From the arsenal grounds.
Q. From what part of the grounds?
A. From the lower part.
Q. Did you see any copper taken off that morning?
A. No, sir.
Q. You hadn't missed any copper that morning?
192 A. No, sir.
Q. Didn't know there was any copper taken away that morning?
A. No, sir.
Q. Didn't know any thieving had been committed that morning?
A. When Lieut. Drury spoke about some one stealing from the arsenal, we knowed they weren't innocent or they wouldn't have run.
Q. You had no personal knowledge on the subject?
A. No, sir.
Q. And just because they ran you were suspicious of them, and you thought you would have been justified in shooting?
A. Yes, sir.
Q. Now, I asked you on cross-examination as to whether or not, when

you were after your men you had any intimation as to where Dowd was, and you said "No," didn't you?

A. Yes, sir.

Q. Didn't you say that you were after your men and you didn't know where Dowd was?

A. No; I didn't know where he was.

Q. Didn't you say that you didn't even know that he was pursuing his man?

A. Well, I heard him hollering. I couldn't see him; he might have been standing and hallooing "halt." I heard him hallooing "halt" four or five times.

193 Q. Didn't you say you didn't know where he was?

A. I didn't know where he was.

Q. Didn't you say you didn't know what he was doing when you were after your men?

A. No, sir; he might have been up on the building hallo'ing halt for all I seen. I wasn't looking at him, but I heard him hallo'ing.

Q. How many times did he halloo?

A. About four or five times.

Q. What did he halloo first?

A. He hallo'ed halt.

Q. How many times?

A. Well, I couldn't tell you how many times; I was hallo'ing myself at the top of my voice.

Q. And you heard him halloo three or four times, "halt," then what did he halloo after that?

A. Well, I heard him halloo "Halt. If you don't halt I will fire."

Q. And you were hallo'ing the same thing after your men?

A. Yes; I was following my men up towards 43rd street.

Mr. YOUNG:

Q. Your superior officer, Lieut. Drury, had told you about the thieving coming from the arsenal as you went down?

194 A. Yes, sir.

(Objected to by counsel for the county.)

By the COURT. Ask him what Lieut. Drury said.

Mr. YOUNG:

Q. Well, repeat what Lieut. Drury said.

A. Going down Almond alley, Lieut. Drury said there were some thieves stealing from the arsenal. He didn't say what they were stealing, only we kept up the double time.

Q. When you heard the shot fired, in what position was your gun?

A. Up to my right shoulder.

NORMAN W. BACKUS, called on behalf of the United States, being duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. What is your age?

A. Twenty-seven, past.

195 Q. What is your present occupation?

A. Soldiering.

Q. What is your rank?
A. Corporal.
Q. What regiment?
A. 9th Infantry.
Q. What company?
A. Company D.
Q. How long have you been in the United States service as a soldier?
A. A little over six years.
Q. Where have you had service?
A. I have had service in Cuba, the Philippine Islands, and China.
Q. You might say how long you were in Cuba.
A. I was in Cuba about three months.
Q. And how long in the Philippines?
A. About 20 months, all told.
Q. And how long in China?
A. About 11 months.
Q. Were you in China at the time of the fall of the city of Pekin?
A. Yes, sir.
196 Q. Who was the colonel of your regiment at that time?
A. Col. Robe.
Q. You went into the service first as an enlisted man—a private.
A. Yes, sir.
Q. And have been a corporal how long?
A. I have been a corporal since March last.
Q. You understand the duties of a corporal?
A. Yes, sir.
Q. You have been at the Allegheny Arsenal how long?
A. Since the 6th of July last; came with that detachment; yes, sir.
Q. Did you hear of any depredations at the arsenal grounds after you came?
A. Yes, sir.
Q. Do you recall the visits of Col. Robertson?
A. Yes, sir.
Q. You may state whether any special precautions were taken as to the arsenal property.
A. I think it was about the 20th, along about the 20th of July; the patrols, I think, started about that time of the lower arsenal.
Q. What were the special orders as to that?
A. The patrol was to leave the gate on Butler street, keeping
197 the buildings on the right, inspecting all the gates and the buildings, and proceed to the railroad track inside the arsenal wall, thence along to the corner of 39th and the railroad; thence up 39th street on the inside, back of the buildings—the hospital and the different buildings that are in the rear there—thence to the gate at Butler street.
Q. That was to be made how often?
A. To be made every thirty minutes at night; once every two hours in the day in the upper arsenal.
Q. Were there any special orders as to the apprehension of people?
A. Yes, sir.
Q. What were they?
A. To apprehend and arrest any persons found in the arsenal grounds after dark, after the patrol started.

Q. Of course you mean your general orders?

A. Yes, sir.

Q. How soon after you came did you learn of depredations on the arsenal property?

A. I was only there a few days when I heard talking around
165 between ourselves.

Q. It was the talk among the soldiers?

A. Yes, sir.

Q. Did you receive any special orders when you went on guard duty that time?

A. Well, we had special orders there right at the post when we first went on, along with our general orders—that is, not to allow any disorderly persons or intoxicated persons inside of the grounds.

Q. You call those special orders?

A. Yes, sir.

Q. Did you have any other special orders?

A. We got the other special orders, I guess, about the third week of July—the latter part of July.

Q. What were those special orders?

A. They were to patrol the lower grounds every thirty minutes during the evening from nine o'clock, and during the day once every two hours for the upper grounds; and the lower grounds were, after nine o'clock in the evening, every half hour, to walk down, keeping the buildings on 40th street on your right, and try all the gates, and if found unsecured, to report them at once to the coporal of the guard; he was acting at that time as commander of the guard; and to challenge all per-
sons we seen down there; and then to walk all along by the gas
166 house there and come up the steps to 39th street, to the main gate of the arsenal grounds on Butler street, and see if all the other gates along 39th street were secured, and report if they were not to the corporal of the guard.

Q. Were you given any special orders as to what you were to do?

A. Yes, sir; to challenge all persons seen down in the lower grounds.

Q. Were you given any orders as to the apprehension of any persons, and what were those orders?

A. Well, to arrest them.

Q. Tell me now, what your special orders were.

A. If I seen anybody down there, I naturally would hallo "Halt." If they started to walk away from me——

Q. I know that's the manner——

Mr. HAYMAKER. Let him tell his story.

By the COURT. Mr. Young asks you what orders you received. Just tell him what orders you did receive, and answer that question.

A. My orders were if I seen anybody down there to arrest them, and I was going to arrest them if I did see anybody down there.

167 Mr. YOUNG:

Q. Were you instructed to be specially vigilant for persons committing depredations?

A. Yes, sir.

Q. And was your attention called to the fact that you were to warn or arrest them?

A. Yes; if I seen anybody down there I was to arrest them.
Q. You received those orders from whom?
A. From Lieut. Drury; no, I didn't receive them from Lieut. Drury, but from the man I relieved on guard.
Q. The man you relieved on guard reported those to you?
A. Yes, sir.
Q. In the presence of whom?
A. Of the corporal of the guard.
Q. And when you left guard did you repeat them?
A. Yes, sir.
Q. To whom?
A. To the man that relieved me.
Q. And was that the custom or the practice of the service?
A. Yes; it was like an endless chain—goes from one man to the other.
Q. And always in the presence of whom?
A. Of the corporal of the guard.
168 Q. Known as what?
A. His exact name was the commander of the guard.
Q. Was that practice continued until the 10th of September?
A. Yes, sir.
Q. I want to call your attention to the morning of the 10th of September, and what was your duty that morning?
A. That morning I was put on guard.
Q. Going on at what time?
A. At nine o'clock.
Q. And your guard duty usually lasts how long?
A. I went on what is called the third relief.
Q. But how long would you be on guard duty?
A. From one to three; I was two hours on and four hours off.
Q. I am asking you for the whole length of time.
A. Oh, twenty-four hours.
Q. Until nine the next morning?
A. Yes, sir.
Q. And how often would you be actually the sentinel walking?
A. Two hours—two hours on and four hours off.
Q. Beginning when?
A. My first tour of duty commenced at one o'clock until three.
Q. You say you went on at nine?
A. Well, we had what we call guard orders at nine o'clock.
Q. So there would be two before you?
169 A. Yes; I was the third relief.
Q. That would be at eleven and one?
A. No, sir; the first relief was from nine to eleven; the second relief from eleven to one, and the third relief from one to three.
Q. And you were on the third?
A. Yes, sir.
Q. And during that time where were you expected to be?
A. At the guardhouse.
Q. And that was where?
A. I was sitting down there.
Q. I say, where was the guardhouse?

A. On Butler street.
Q. At the gate?
A. At the gate.
Q. And how were you armed when on guard duty?
A. With a rifle and ten rounds of ammunition.
Q. When you were not actually on sentinel duty, where was your gun kept?
A. In the guardhouse.
Q. And where was your ammunition kept?
A. Around me, in my belt.
Q. And were you expected to have that around you all the time?
A. Yes; we had that on for twenty-four hours.
170 Q. Do you recall anything unusual that morning?
A. Yes; that morning I was sitting down there and I was reading the morning paper——
Q. Where?
A. At the guardhouse at the gate. And Lieut. Drury came up and Private Dowd was walking——
Q. This was what time?
A. It was about ten o'clock; and I was sitting there and he says, "Private O'Keefe, go and get your rifle," he says, "and follow me." Well, I run in and got my rifle, and I proceeded to follow him and Private Dowd to Butler street to Almond alley, and he told us to take up the double time and go down Almond alley to the railroad; and on the way down there we kept up the double time; he didn't say nothing until we got down and he says, "There's some thieves stealing from the arsenal." When we got down to Willow street he told us—I understood him to say to get those men coming from the arsenal grounds. And we still kept on double time—me and Private Dowd—until we got down to the railroad, and we hugged up close to the wall down towards 40th street on the railroad and kept close to the buildings, and he got right near the corner—I judge it would be about five feet from the corner of 40th street there—and there was three or four men went
171 right past us, and I turned around right away and I started after them and I hallo'ed "halt," and I followed two of them up towards—they didn't go on the railroad tracks, the two I followed, but this side of the tracks between the railroad tracks and the buildings—and then I kept on pursuing them up towards 40th street, and I hallo'ed halt several times, and hallo'ed halt, and "If you don't stop I will fire." And I loaded my piece in the meantime, and I got it to my shoulder until I got up towards Almond alley, and one fellow kept close to the fence and I was going to fire my piece off, and there was some women and children come out 41st street, and in the meantime I heard the report of a shot and I looked around and Private Dowd then hallo'ed to me, come over and give him a little assistance; to come over and help him with his prisoner. So I walked over the railroad track to help Private Dowd.
Q. Just tell us there where Crowley was?
A. Well, Crowley was right across from me, right over from my left towards the lumber pile, and when I seen him he was kind of walking towards me and then he started down towards the arsenal grounds, down the railroad track.

Q. Towards what person?

A. Towards Private Dowd. And I went over to assist Private Dowd and we laid him down on the railroad track, and Lieut.

172 Drury came up and he says to me to go and telephone for an ambulance, and I took up the double time and run across the railroad track, up through this opening, into some office there.

Q. What opening?

A. In the lumber pile; there was a little opening there right in front of the office.

Q. Was that where you had seen Crowley in the first place?

A. Crowley was on the side towards the houses.

Q. But this lumber pile was toward the tracks?

A. Yes, sir; and I went in there and asked them to please telephone for an ambulance, that there was a man wounded down there, and a gentleman says "yes." When I come back down to where the man was laying, Lieut. Drury told me to go and get some water and I met a fellow coming out of that shop there with a bucket of water, and I helped him to carry it over and went back there, and I stayed there and kept the crowd back until the patrol wagon come. When the patrol wagon come then I walked back. After they took the wounded man away in the patrol wagon, then Lieut. Drury told me to go back and report to the guardhouse, and I walked up 40th street to Butler into the arsenal grounds and I stayed there until I was relieved at nine o'clock the next morning.

Q. Did you perform guard duty in the meantime?

173 A. Yes, sir.

Q. When you got to the corner of Almond and Willow, you said that you and Private Dowd went down toward the railroad. Where did Lieut. Drury go?

A. Lieut. Drury went down Willow street towards 40th.

Q. And you next saw him——

A. Helping the wounded man. He was fixing the wounded man's wounds up.

Q. I want you to go over this course on this map—Exhibit No. 1—and I call your attention to this map—Exhibit No. 2. Show us where you started from. You started from the gate?

A. We started here at the gate, and come down Butler street to Almond alley double time, down Almond alley—Lieut. Drury leaving us here.

Q. He left you at Willow street?

A. Yes; and he started down towards 40th street, and we kept on double timing down here to the railroad.

Q. You kept along Willow street until you got almost to the corner of 40th?

A. No; we turned off Almond alley to the railroad.

Q. Now, I call your attention to map No. 1. Just show us here, after you turned off Almond alley to the railroad, how did you go?

A. We kept close here; hugged these buildings.

174 Q. Hugged these buildings marked "Dwelling," and the building marked "Office," and the one marked "Platform?"

A. Yes; we kept down close until we got within about five feet of 40th street, and there was three or four men dashed right across, and there was two of them took up right across this way.

Q. Two of them took up the railroad?
A. Yes; and kept in between the railroad and the wall.
Q. They were both between the railroad track and the wall?
A. Yes; between these buildings.
Q. Between the railroad track and the buildings on the right of the track going east?
A. Yes, sir. I kept following them up, and kept hallooing, "Halt!" said, "If you don't stop, I'll fire!" I followed them on clear up as far as here, above Almond alley.
Q. Followed them up past Almond alley, towards 41st street?
A. Yes, sir; and some women and children come out of 41st street, and then I was afraid if I fired I might hit one of them, and at the same time I heard the report of a shot, and I looked around.
Q. Then you didn't fire?
A. No, sir; I didn't fire.
Q. For the reason you have given. You looked around, and where did you see Crowley?
175 A. He was about down--this is the opening here; he was down about in here somewhere.
Q. This is the lumber pile?
A. Yes; and this is the opening.
Q. Now, where was Crowley?
A. He was down here when I seen him; he was walking; he was turning around and coming out this way on the other side of the opening.
Q. Which side of the opening, now?
A. Down towards the arsenal grounds.

By the COURT:

Q. He hadn't yet reached the opening?
A. No, sir; he started to walk out this way and down this way towards the arsenal grounds.
Q. He started out from the lumber pile and started to walk towards the arsenal grounds?
A. Yes; down the railroad.
Q. Was that before or after you heard the shots?
A. Right after I heard the shot.

Mr. YOUNG:

Q. Where, as near as you can recollect, did he and Dowd meet?
A. As far as I can judge on there, it was somewhere around in here.
176 Q. How many feet would you say, or yards, from the opening?
A. About thirty feet.
Q. He walked about thirty feet towards the arsenal?
A. Yes, sir.
Q. And did Dowd walk towards him?
A. Yes, sir.
Q. And they met?
A. Yes, sir.
Q. And then you went to their assistance?
A. I went to his assistance, and we laid him down on the switch.
Q. And then you did what you have told us?
A. Yes, sir.

Cross-examination by Mr. HAYMAKER:

Q. What was your occupation before you joined the Army at Auburn, N. Y.?

A. Well, I was a sheet-ironworker.

Q. What was your position when you arrived at the arsenal?

A. A private.

Q. You arrived at the arsenal, you say, at what time?

A. July 6th, 1903.

Q. And you were a private from that time on, were you?

177 A. Yes, sir.

Q. Had you been on guard duty from the time you arrived there on the 6th of July up to September the 10th?

A. Yes, sir; that is, when my regular turn came.

Q. When did you first hear of some depredations about the Government property?

A. Well, a few days after we arrived I heard the men speaking of it between themselves.

Q. Did you know what they were; what the depredations were?

A. No, sir.

Q. What were the orders given you with reference to depredations in and about the ground?

A. To arrest anyone seen down in the lower grounds or the upper grounds, either.

Q. That is, any persons seen on the Government property?

A. Yes, sir.

Q. Is that all?

A. That was all.

Q. Then on the morning of the 10th of September Lieut. Drury called you specially?

A. We went up Butler street to Lieut. Drury.

Q. Where were you when Lieut. Drury called your attention to something on the 10th of September?

178 A. I was in the guardhouse on Butler street, at the main gate, sitting down.

Q. He told you to get your gun and follow him?

A. Get my rifle and follow him.

Q. And you did that at once—going to what point?

A. We went up Butler street to Almond alley, and down Almond alley to the railroad.

Q. You and Private Dowd?

A. Yes, sir.

Q. You separated at what point?

A. We separated at the corner of Almond alley and Willow sts.

Q. From there did you keep up your double time when you separated from Drury?

A. Yes, sir.

Q. What do you mean by double time?

A. We didn't run; it was a little like what you call a dogtrot.

Q. It was a regulation step?

A. Yes, sir.

Q. Did you at any time, from the time that patrol was established until the 10th of September, act as commander of the guard?

A. Yes, sir.

Q. You may state whether you heard the sentinel on duty repeat the special orders.

A. Yes, sir.

Q. As you have given them?

A. Yes, sir.

198 Q. Were they delivered in your presence?

A. Yes, sir.

Q. By whom?

A. By the sentry to the sentry who relieves him.

Q. And you may state whether you ever heard those special orders repeated by Private Dowd.

A. I don't remember; not until the 10th of September; after that I did.

Q. Not until after the 10th?

A. Yes, sir.

Q. You were not commander of the guard, then, at any time when he was on sentinel duty that you recall?

A. I can't recall it.

Q. Now, I come down to the morning of the 10th of September, and you may state if you received any orders that morning from any person.

A. I was in front of Lieut. Drury's quarters, officers' quarters No. 1, and Lieut. Drury told me to go and tell Serg'ant Douglas to get his rifle and to get my own and proceed out to 39th street and down to the railroad; that there were men in the arsenal supposed to be stealing.

Q. Well, what further were you to do?

A. Well, I got Serg'ant Douglass. I got my rifle on my way past

199 the quarters, and Serg'ant Douglas got his also, and we both went down to 39th street, and I stopped at the gate on 39th street.

Q. Near what buildings?

A. Well, there are no buildings down there; I think there is one building on the inside.

Q. Well, is it a switch gate?

A. Yes.

Q. Where the switch comes in?

A. Yes, sir.

Q. That's pretty close to the lower wall?

A. It is right near, right on the corner.

Q. And you waited there?

A. Yes, sir.

Q. Had Douglas overtaken you?

A. Yes, sir.

Q. He overtook you?

A. On the outside of the gate.

Q. Which gate did you go out?

A. The small gate near the hospital.

Q. On what street?

A. On 39th street.

Q. And you followed it across the railroad?

A. Yes.

Q. And how long did you stay at the railroad on 39th?
200 A. I must have stopped there perhaps five minutes.
Q. What next did you do?
A. Then Serg'ant Douglass left me and he went around the corner onto the railroad, and I didn't see him any more.
Q. What did you do?
A. I stopped at the gate?
Q. For what purpose?
A. To stop anyone coming that way.
Q. And Douglas went how?
A. He went onto the railroad track.
Q. Did you follow him?
A. Not at the time; no, sir.
Q. What was the first intimation you had of anything going on?
A. Well, the first thing I saw was a crowd on the railroad track opposite 40th street.
Q. You may state whether you heard anything.
A. I didn't hear anything.
Q. Where did you go then?
A. I went up where the crowd was congregated there.
Q. Did you see anybody there that was wounded?
A. Yes, sir.
Q. Did you go up to where he was?
A. Yes, sir.
201 Q. Who was there?
A. Private Dowd and Lieut. Drury and Private O'Keefe.
Q. Where was the man?
A. He was lying on the track inside the rails.
Q. What was Drury doing?
A. Lieut. Drury was trying to stop the flow of blood from the wound.
Q. How long did you remain?
A. I remained there until the wounded man had left.
Q. He was taken away, was he?
A. Yes, sir.
Q. In what?
A. He was put into the patrol wagon.
Q. Where did you go then?
A. I went back to the arsenal.

Cross-examination by Mr. HAYMAKER:

Q. Do you know at what point the man was shot on the railroad track?
A. No, sir.
Q. Have you learned since that time?
A. Nothing only from hearsay; that's all I know.
Q. Well, you have heard from hearsay, or some one has
202 pointed it out to you since?
A. Yes, sir.
Q. How far were you from that point at the time you first saw there was trouble there?
A. I was at the corner of the wall at 39th street.
Q. How far—one square away?

A. It's a large square. I don't know how far.
Q. That is the width of the arsenal grounds, is it?
A. Yes, sir.
Q. Did you hear the shot that morning?
A. No, sir.
Q. What kind of time did you use—what step in going down there?
A. Well, I used the double time nearly all the way.
Q. What is that time?
A. It's 180 steps to the minute.
Q. At the time Lieut. Drury spoke to you that morning with reference to some depredations by thieves, who was with you?
A. Well, I can't recall that; there were men working in front of the quarters there.
Q. Was Private Dowd there?
A. No, sir; he wasn't.
Q. What is the length of the step?
A. 36 inches, double time.

203 EDWARD KRAUSE, called on behalf of the United States, being duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. How old are you?
A. Thirty-one, coming April.
Q. What is your occupation?
A. Tailor.
Q. What are you doing now?
A. Soldiering.
Q. Where?
A. Allegheny Arsenal.
Q. Whose service?
A. United States service.
Q. How long have you been a soldier?
A. Coming on nine years.
Q. And how long a corporal?
A. Corporal this time since the 6th of last May.
Q. Had you served as corporal before?
A. Yes, sir.
Q. Where have you had service?
A. Had service in the Philippine Islands and in the United
204 States.
Q. Do you know the duties of a corporal?
A. Yes, sir.
Q. Do you know the duties of a corporal as commander of the guard?
A. Yes, sir.
Q. When did you come to the Allegheny Arsenal?
A. The 6th of June.
Q. Did you at any time hear of any depredations after you came?
A. Yes; immediately after we came.
Q. What kind?
A. Stealing.
Q. Do you recall visits of Col. Robertson?

A. Yes, sir.

Q. Do you recall any special orders as to the depredations?

A. Yes, sir. He ordered, through Lieut. Drury, that we had to put on a patrol, immediately after Col. Robertson came through the Allegheny Arsenal in July.

Q. What were those special orders?

A. The special orders were we had to have a patrol every thirty minutes at the lower end of the arsenal after nine o'clock in the evening until reveille in the morning, and every day also we were to patrol the upper end of the grounds, and arrest all suspicious characters on the Government reservation.

205 Q. You may state whether, as commander of the guard, you heard these special orders repeated from time to time by the sentinels.

A. Yes, sir.

Q. You may state whether you heard them repeated by Private Dowd.

A. Yes, sir.

Q. When?

A. The morning of the 10th.

Q. Did you hear them repeated to him?

A. Yes, sir.

Q. By whom?

A. Private Jones.

Q. That was in your presence?

A. Yes, sir.

Q. In what office?

A. As a noncommissioned officer.

Q. Yes; and as what special officer at that time?

A. Commander of the guards.

Cross-examination by Mr. HAYMAKER:

Q. You didn't hear the instructions from Col. Robertson?

A. No, sir.

206 Q. And you also heard of some depredations committed upon the Government property?

A. Yes, sir.

Q. What were the depredations of which you heard?

A. I didn't know what it was; I just heard there was some thieving going on.

Q. Heard there was thieving?

A. Yes, sir.

Q. Well, thieving of what kind of property?

A. Well, I didn't know what kind.

Q. You didn't know whether they were carrying away a building or some private property?

A. I guess they couldn't carry a building away very well.

Q. Well, you never heard what they were taking?

A. No, sir.

Q. You hadn't any idea what the depredations consisted of?

A. No, sir.

Q. Never heard?

A. No, sir.

Q. What was your occupation before you became a soldier?
A. Tailor.
Q. Where?
A. Rochester, New York.

207 RICHARD JONES, a witness called on behalf of the United States Government, being duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. How old are you?
A. Thirty-two.
Q. Are you in the service of the United States?
A. Yes, sir.
Q. How long?
A. Four years and thirteen days.
Q. To what regiment are you attached?
A. The 9th U. S. Infantry.
Q. Where did you have service?
A. Service in Porto Rico and Sandy Hook, New York.
Q. Do you recall the morning of the 10th of September?
A. I do, sir.
Q. Were you on sentinel duty that morning?
A. Yes, sir.
Q. Did you have any special orders?
A. Yes, sir.
Q. What were they?

A. The special orders of my post, which was No. 1 post and
208 extended from the line of the wall on Butler street to three paces at the west end of the sally port, and I was to make a tour of the upper grounds every two hours, starting at the road going up by the stable and coming along to Penn avenue and then crossing the lot and coming down to the gate on Butler street; that was from reveille until nine o'clock in the evening. From nine o'clock in the evening until reveille I was to make a patrol of the lower grounds from the main gate, keeping the buildings on my right, until I reached the gate going down to the wall by the railroad track; thence along the wall along to the steps, keeping the building at my right, until I got back to the gate again. I was to arrest all suspicious and disorderly characters and turn them over to the corporal guard. If I found anyone committing a depredation or trespassing on the property I was to halt them at least three times, and if they refused to halt I was to command them to halt, stating that I would shoot. I was to use my own judgment whether to halt them once or twice; then if I found no other means of stopping them, to shoot. I was to allow civilians in during the day from reveille until nine in the evening, but they were not allowed to loiter around the grounds; they were just allowed down at the barracks in case they had friends there. After nine o'clock no civilians were allowed in the reservation.

209 Q. You may state whether or not you repeated those orders to your relief?
A. Yes; I did.
Q. Who was your relief?
A. Private Dowd.

Q. Was that on the morning of the 10th of September?
A. Yes, sir.
Q. And you repeated those orders to him?
A. Yes; I did.
Q. In whose presence?
A. In the presence of Corporal Krause, as commander of the guard.
Q. At what time was that?
A. I would judge it was about two or three minutes after nine. It took him two or three minutes to come up from the barracks to the guardhouse.
Q. Then you were relieved?
A. I was relieved; yes.
Q. Altogether?
A. Altogether; yes, sir.
Q. And didn't come on duty again for——
A. Three or four days.
Q. What was your occupation before you became a soldier?
A. A clerk, sir.

210 Cross-examination by Mr. HAYMAKER:

Q. Where?
A. Boston.
Q. You delivered these instructions you speak of to Private Dowd?
A. I did, sir.
Q. When first?
A. Well, I can't remember whether I delivered them before or not. I delivered them that morning, I am sure.
Q. Why that morning?
A. Because he was my relief.
Q. Had you seen Drury that morning?
A. No, sir; I hadn't that morning.
Q. And then you gave him special orders that morning of the 10th, did you?
A. Yes; I did.
Q. How did those orders differ from the orders you gave him on other mornings?
A. Well, I don't know that I ever gave him orders before.
Q. You don't know that you ever gave him any before?
A. No, sir; because he never did any guarding up to the 6th of the month there.

211 Q. You don't recollect of ever giving him any orders up to the morning of the 10th?
A. Private Dowd—no, sir.
Q. And you hadn't seen Drury the morning of the 10th?
A. No, sir.
Q. Who relieved you?
A. Private Dowd relieved me.
Q. At what time?
A. Shortly after nine o'clock.
Q. And who had you relieved?
A. I relieved Private Ford.
Q. At what time?
A. Seven o'clock.

Q. And did he turn over any special orders to you?
A. He turned over to me the special order that I gave to Private Dowd.
Q. Do you know where he got it?
A. I suppose he got it from the man he relieved.
Q. What were your instructions to Dowd?
A. My instructions to Dowd?
Q. Yes.
A. You mean orders?
Q. Yes.

212 A. My orders to Private Dowd were that the post extended from the line of Butler street to three paces at the west end of the sally ports; from reveille until nine p. m. he was to patrol the upper grounds, taking the road leading by the stable, going up to Penn avenue, and thence crossing across the lot and coming to the gate on Butler street; from nine p. m. until reveille he was to patrol the grounds, keeping the buildings to the right, and going as far as the road leading by headquarters, and thence down the wall along the railroad, along the wall to 39th street, and thence up 39th street to the stairs, and thence, keeping the buildings to the right, to the gate.
Q. Well, any other orders?
A. Yes; to challenge all persons trespassing or committing any depredations on the ground and halt them—halt them at least three times; if they refused to halt, to challenge them, warning them that you would shoot.
Q. The orders were to halt them on the Government property?
A. The orders were to halt them, and if they didn't halt, to shoot.
Q. That is, if he was then on the Government property.
A. Yes, sir.
Q. And if he, while on the Government property, didn't stop when he was halted, he was to shoot?
A. Yes, sir.

213 JOSEPH T. KIRK, called on behalf of the Government, sworn.

Direct examination by Mr. YOUNG:

Q. How old are you?
A. Twenty-nine.
Q. Where do you live?
A. At Wilkinsburg.
Q. What is your business?
A. I am a machinist at the present.
Q. Where?
A. James Bonar & Co. (Incorporated).
Q. And where is their place?
A. Corner of 40th and Allegheny Valley Railroad.
Q. Just look at map No. 1 and see if that indicates the position of that place.
A. Yes, sir; it does.
Q. Do you recollect the fact of a shooting of a person by a soldier?
A. Yes, sir.
Q. When was that?

A. September the 10th.

Q. Where were you at the time it happened?

214 A. At the time of the shooting?

Q. Yes, sir.

A. Second story of the building.

Q. What building?

A. James Bonar & Co.

Q. Was your attention called to any persons that morning about the arsenal wall?

A. Yes, sir.

Q. About what time?

A. Between nine and ten o'clock.

Q. What did you see?

A. I saw some young men standing at the corner of the arsenal wall next the railroad with some bundles of copper.

Q. About how many?

A. I couldn't tell you, sir.

Q. I mean how many persons?

A. I couldn't tell you the number of persons; four or five, if my recollection is good.

Q. Where were you at the time?

A. Standing in the first story of the shop.

Q. The first?

A. The first story of the shop, looking out the window.

Q. I wish you would look at map No. 1 and show us just about where that window is.

215 (The witness indicated on the map mentioned the window out of which he was looking on 40th street, in the building of James Bonar & Co., and marked said window with his initials.)

Q. Where were the persons you saw?

(The witness indicated on map No. 1, by marking "persons with copper" at a point between the telegraph pole and the arsenal wall.)

Q. Was the copper between the pole and the wall?

A. No, sir; at that time it was lying right in the gutter along the railroad.

Q. At the time you speak of it was lying there?

A. Yes, sir.

Q. Where was it afterwards.

A. It was picked up from there and laid right behind the telegraph pole, between the telegraph pole and the wall.

Q. By whom?

A. By the boys or the young men.

Q. Did you recognize any of them?

A. No, sir.

Q. Did you subsequently recognize any of them?

A. Only by their clothes.

216 Q. Well, whom did you recognize?

A. I couldn't tell you; I didn't pay that much attention to them that I could tell anything about them.

Q. When you saw them there what were they doing?

A. They were arguing, or appeared to be arguing, about the copper.
Q. With whom?
A. Just among themselves.
Q. What time was this?
A. Between nine and ten o'clock; I couldn't give you the exact time.
Q. What did you do?
A. At that time I didn't do anything but look at them.
Q. Who was present with you?
A. Several of the men in the shop.
Q. Give their names?
A. If I recollect correctly, there was Mr. Statenfield, Mr. Evans, and Mr. Simpson.
Q. And did they look out with you?
A. Yes, sir.
Q. And did you talk among yourselves about it?
A. We did.
Q. And what was the result of that conversation?
A. Some one in the crowd said that some one should telephone
217 to the officers—that is, to the police.
Q. Well?
A. But nobody appeared to want to telephone; and finally we argued the case and just broke up and turned away, and I started to the office.
Q. Where was the office?
A. It was in the same building, situated in the corner.
Q. Near where you were standing?
A. Across the building.
Q. Do you mean across its width or its length?
A. Its width.
Q. What did you do?
A. I went to the telephone book to look up the police station and I couldn't find that, and I looked up the number of the arsenal and called up by telephone and asked for the captain, and whoever answered the telephone said "I am the man you want." And I told them if they wanted to get some men that were taking copper they wanted to get down to the corner of 40th and the Allegheny Valley pretty quick; and whoever it was didn't ask me any questions only where it was, and I said "40th and the Allegheny Valley," and he said, "Call me in fifteen minutes," and hung up the receiver.
Q. Well, about how long were you engaged until you got through with the telephone?
218 A. Well, it took me several minutes to find the number; it was quite a while before I could find the number. I just simply had to go through the book until I found it. I didn't know the name of the arsenal at that time.
Q. Well, when you came out of the telephone office where did you go?
A. Went over and looked out of the window.
Q. Which window?
A. The same window I was looking out of before.
Q. What did you see then?
A. I saw that the copper was gone.
Q. Did you see the persons?

A. The boys were not there.
Q. They were not there?
A. They were not there.
Q. Well, what did you do then?
A. I went to work.
Q. Where?
A. In the second story of the factory.
Q. Upstairs in the same building?
A. In the same building; yes.
Q. What was the next you know of?

219 A. My attention was called to the fact that there was some young men sitting down on the steps, said to be the same young men that we saw across the street, and I got down off the ladder and went and looked at them.

Q. Were they there?
A. They were sitting there; yes.
Q. Were they the same persons?
A. Appeared to be to me, as far as I could see.
Q. Well, what next?
A. When I was still looking out of the window, I noticed a soldier coming down 40th street.
Q. Who was he?
A. Afterwards it proved to be Lieut. Drury; at the time I didn't know who he was, only some one said it was the lieutenant.
Q. How far up 40th street was he?
A. When I saw him he was about 150 or 200 feet from the railroad.
Q. Where was he coming?
A. Coming towards the factory.
Q. At the right-hand side of the railroad?
A. Going down; yes, sir.
Q. How was he coming?
A. He was coming pretty fast; he wasn't running, but at a very fast walk.

220 Q. Did you notice the boys at the same time?
A. Yes; as soon as they saw him, they started to run.

Q. Was anything said by any of them?
A. Not that I heard.
Q. As soon as they saw him they started to run?
A. Yes; and they ran out towards the railroad and ran right around the corner of our building; that is, some of them; one of them ran straight across the railroad, and the others ran around the corner of the building.
Q. How many were there of them?
A. There seemed to be about four.
Q. Altogether?
A. Altogether.
Q. Who was with you at the time?
A. At the window?
Q. Yes.
A. Mr. Statenfield and Mr. Evans.
Q. What was the next thing that happened?

A. While we were watching Lieut. Drury we noticed him reach into his coat just as soon as the boys started to run; appeared to be after some weapon; at the time we didn't know what it was—he reached down into his coat and the revolver caught on the coat; he didn't get it out very quickly, and we watched him, and the man he seemed to be watch-
221 ing closely was right across the railroad; he got his revolver out and drew it up and then dropped it again, and just at that instant we heard the report of a shot.

Q. Where was Drury at that time?

A. He was between 90 and 100 feet from the railroad; if you would go straight down to the railroad, it would be 90 or 100 feet from the railroad.

Q. And what building was to the right?

A. James Bonar & Company's factory.

Q. What did you do when you heard the shot?

A. I immediately left the window and went across to the side next to the railroad and looked out the window there.

Q. On the same floor?

A. Yes, sir.

Q. What is the distance?

A. It isn't over 20 or 30 feet.

Q. What did you see there?

A. I saw a soldier standing out in the middle of the railroad track, and another walking, and turning to my right I saw a young man coming across the railroad track and going in between the two tracks and going towards the soldier, and the soldier coming towards him, and when they got together the soldier took hold of him and walked a few steps down the railroad track, and the young man became very weak and
222 started to sink down, and the soldier put his arm around him and let him down onto the ground easy.

Q. Where was Drury at that time?

A. I didn't see him until he got out onto the track, and he stooped down and commenced to work with the wounded man.

Q. At the time you heard the shot fired, was Drury in a position that he could see the soldier or the person that was shot?

A. No, sir, he could not; and furthermore he wasn't looking in that direction; he was looking at the man going across the railroad.

Q. If he had given any command to fire, you would have heard him?

A. Yes; and we would have seen his lips move, and we were watching him very closely.

Q. And from the position that you were in at the window, could Drury have seen either of them?

A. No, sir.

Q. Then what happened?

A. There seemed to be a crowd gather.

Q. What did Drury do?

A. He attended to the man; he stooped down, and never left him.

Q. When you saw him where was he?

223 A. When I saw him he was stooping down over the man—that is, the first time I saw him after I saw him on 40th street.

Q. Did you go out?

A. No, sir.

Q. Could you see what he was doing?
A. Yes, sir.
Q. What did he do?
A. He took down the man's pants and appeared to be working with the wound.
Q. Did you see the wounded man?
A. I saw him lying on the track.
Q. Could you recognize him as one of the——
A. No, sir, I couldn't; because I couldn't see his face very well for the crowd.
Q. You didn't go out?
A. No, sir.
Q. I want you to turn to this map. You have marked the window that you looked out of when you saw the men with the copper. Now, tell us where you went from there to the office?
A. Right here.
(The witness indicates a point on the map, Exhibit No. 1, and marks it "Office.")
Q. And when you came out of there where did you go?
224 A. I went back here.
Q. Back to the window first indicated?
A. Yes, sir.
Q. Then where?
A. Then I went upstairs. There is a pair of stairs, you know, right up here.
Q. What window did you look out of there?
A. The window right over the top of the steps.
Q. The window right over the part marked "Steps" of the James Bonar building?
A. Yes, sir.
Q. And where were the boys at that time?
A. Sitting on the steps.
Q. What steps?
A. On Bonar's steps, on 40th street.
Q. Where was Drury when you first saw him?
A. Drury was out in here when I first saw him.
(The witness indicates a point between two buildings, being the first buildings above Bonar & Company's building on 40th street.)
Q. Where was he when the boys started to run?
A. Down in here, just below the steps.
225 (Witness indicates a point opposite the upper end of Bonar's building on 40th street.)
Q. Where was Drury when you heard the shot fired?
A. About 90 or 100 feet from the railroad.
Q. Which corner did the boys go around?
A. Around the corner of Bonar & Company's building, corner of the railroad and 40th street; two or three of them went there, and one straight across.
Q. Do you know that ash pile across the track?
A. I know its location.
Q. Did one go across there?
A. Right up over the top of it.

Q. Where did you come when you heard the shot fired?

A. To the window right there.

(The witness indicated a window on the second floor of Bonar's building, a few feet from the corner of 40th and the railroad, and marks the point "Window, Kirk, 2nd floor.")

Q. Where was the man that was wounded when you first saw him out of the window?

A. He was up along the lumber pile; I couldn't just state where he was.

226 (Witness indicates lumber pile near Du Barry & Company's office.)

Q. How was he turned?

A. Coming towards the soldier.

Q. Where was the soldier?

A. He was between the two tracks, walking up towards the man.

Q. About how far from the man?

A. Oh, he was at least 80 or 90 feet away from the man.

Q. And were they walking towards each other?

A. Yes, sir.

Q. Which proceeded the greater distance before they met?

A. There was very little difference.

Q. And how far did they walk after they met?

A. They didn't walk over 15 feet.

Q. Did they turn?

A. They turned; that is, the soldier turned and walked down towards 40th street.

Q. And walked how far?

A. Not more than 15 feet.

Q. And then these events happened that you have stated?

A. Yes, sir.

Cross-examination by Mr. HAYMAKER:

Q. What time in the morning was it that you first noticed some
227 men about the arsenal corner?

A. Between nine and ten o'clock.

Q. Were they outside or inside of the arsenal then?

A. Just outside the arsenal wall.

Q. On the street?

A. On the railroad track on the corner.

Q. What is the distance from where you were standing to where the men were on the corner?

A. I couldn't give it to you; it was across the street.

Q. What is your best impression?

A. I suppose 100 feet or more; maybe over 100 feet.

Q. And where was the copper at that time?

A. Lying along the gutter and the railroad track.

Q. And what was the size of the bundles?

A. At the distance that I could see, one bundle seemed to be about as long as, or longer than, the table, about six or eight feet, and I suppose about 15 inches in diameter.

Q. And how many bundles did you see there?

A. If I recollect properly, I saw three bundles.

Q. And how far were the bundles from where the boys were?
A. Right there.
Q. Right alongside of them?
A. Yes; they were handling them the biggest part of the time.
228 Q. In what way?
A. Moving them around.
Q. You, of course, didn't know where the bundles came from?
A. Yes, I did; because several men had seen them bring them there.
Q. But you didn't see it yourself?
A. No; I didn't see it.
Q. You hadn't any personal knowledge of where the stuff came from?
A. Only from its appearance.
Q. And did you remain there at the window all the time the boys remained at that corner?
A. No, sir.
Q. You went back to the office?
A. Yes, sir.
Q. And when you returned to the same window, the boys were on the steps immediately under the window?
A. No, they were gone; I didn't know where they were at that time.
Q. You couldn't see them?
A. I couldn't see them; no, sir.
Q. Could you see the copper?
A. No, sir.
229 Q. Had it gone?
A. It had disappeared, too.
Q. How many men or boys were at the corner of the arsenal where the copper was?
A. Either three or four.
Q. Where did you next see the boys?
A. On the steps.
Q. Immediately under the window?
A. Under the window where I was standing.
Q. You saw how many boys on the steps?
A. If I recollect properly there was four.
Q. And the steps were immediately under your window?
A. Yes, sir.
Q. And how could you see down—by reaching out of the window?
A. The window was up, and I leaned out over the sill.
Q. Did the other men lean out, too?
A. Yes, sir.
Q. Then you were looking down at the top of the other men?
A. Yes, sir.
Q. And are you able to say that they were the same men that you saw over at the corner?
A. Yes, sir.
Q. Could you see their faces when they were under you?
230 A. I could see their clothes.
Q. How do you know they were the same men?
A. By their clothes; by the caps that they wore.
Q. What kind of caps did they wear?
A. I couldn't tell you now.

Q. And you don't remember the kind of clothes they wore at that time?

A. I couldn't tell you now; no, sir.

Q. And were they sitting there when Lieut. Drury came along 40th street?

A. Yes, sir.

Q. Where was he when you first saw him coming along 40th street?

A. I don't know the distance; I could indicate it on the map.

Q. How far did he seem to be from the steps when you first saw him?

A. Perhaps 20 or 30 feet from the steps, or something like that.

Q. You know where Drury first appeared on 40th street?

A. No; I don't.

Q. The boys sitting on the steps could see a man for a long distance along 40th street?

A. Providing he was hidden by nothing.

Q. Was there anything to hide him along 40th street?

A. A pair of tall steps there. You couldn't see a man coming
231 out of Willow street from the steps.

Q. Sitting where they were?

A. Yes; you couldn't see a man coming out of Willow street sitting on the steps; the steps were too high; he would have to get clean out in the middle of the street before you could see him; these steps are very high, about six or eight feet.

Q. How far are those steps from the steps where the boys are sitting?

A. About 130 or 140 feet.

Q. Then, after Drury passed the steps of the dwelling house, there would be nothing to obstruct the vision of the boys between that and the steps where they were sitting?

A. Not anything.

Q. And if Drury had been out on the street, on 40th street, the boys sitting on the steps could see him up as far as Willow street?

A. If he had gotten out into the middle of the street.

Q. Unless their vision was obstructed by the steps of the dwelling, they could see a man up as far as Willow street?

A. Providing they were looking for him.

Q. How many men or boys started directly across the railroad track?

232 A. One.

Q. Towards the ash pile?

A. One.

Q. And which way did Lieut. Drury go then?

A. He went right on down the street while I saw him; I didn't see him but an instant.

Q. He kept on down 40th street?

A. Towards the railroad.

Q. Didn't cross the railroad track after the man that started for the ash pile?

A. No, sir; he did not.

Q. And how far did Drury go along 40th street?

A. I couldn't tell you, because when I saw him get his revolver out I heard a shot, and I turned immediately to look out of the other window.

Q. Did Drury say anything to the man that crossed the railroad track?
A. Not that I could hear; his lips didn't even move.
Q. But you saw him have a revolver?
A. I did.
Q. Did you see him cock it?
A. No, sir.
Q. Did you see him raise it?
A. I did.
233 Q. And point it in which direction?
A. Towards the man.

By the COURT:

Q. Which man?
A. The man that went across the railroad track.
Q. What became of that man?
A. He disappeared.

Mr. HAYMAKER:

Q. Did he raise it up and point it toward the man?
A. He was raising it; he didn't get it up until the shot was fired.
Q. Did Drury say anything to the man that was crossing the railroad?
A. Nothing that I could hear.
Q. But you saw it distinctly?
A. I did.
Q. Did you hear anything before the shot was fired?
A. No, sir.
Q. Nothing that attracted your attention at all?
A. No, sir.
Q. Your window was up?
A. I was too busily engaged watching the other man.
234 Q. You were too busy watching the man to hear anything?
A. Yes, sir.
Q. How would that interfere with your hearing?
A. I was busy watching Drury and the young men at the steps.
Q. But you heard the shot fired?
A. We couldn't help but hear that.
Q. That was all that attracted your attention?
A. Yes, sir.
Q. Did you see the other men run along 40th street, or a certain person cross the track towards the ash pile?
A. They all left the steps and that was the last I saw of them.
Q. You couldn't see the others going along 40th street?
A. No, sir.
Q. Why?
A. Because they didn't have any distance to go until they ran around the corner.
Q. Did you follow them as far as the corner?
A. No, sir; I just saw them leave the steps and then watched the other young man that crossed the track.
Q. Then you don't know what happened up at the corner?
A. No, sir; I do not.

Redirect examination by Mr. YOUNG:

Q. How far are the steps from the corner?

235 A. It isn't over ten or twelve feet.

Q. They went immediately around the corner, did they?

A. Yes, sir.

Q. The three?

A. Three of them.

Q. And the others toward the ash pile?

A. Toward the ash pile.

Q. And Drury at that time was how far from the line of your building to the arsenal wall?

A. Well, he wasn't more than four or five feet from the curb when I saw him last.

Q. No; but the line extending along the railroad from your building to the arsenal wall, across?

A. Well, Drury was 100 feet from the railroad track, straight down, five feet from the curb—he was 100 feet from the railroad track.

Q. And where was the boy that was running toward the ash pile when he raised his revolver?

A. He just got about to the top of the ash pile.

Q. And Drury was still nearly 100 feet from the track?

A. Yes, sir.

Q. So the boy was that distance and the distance across the track to the ash pile?

236 A. Yes; when he raised his revolver.

Q. He just raised it?

A. Yes; when the shot was fired on the other side, and he dropped it immediately.

Q. What was the condition of the window that you were looking through on 40th street?

A. It was up.

Q. And what was the condition of the window on the opposite side?

A. It was down.

Q. So you looked through the panes of glass towards the people that were on that side?

A. Yes; I did.

Q. I asked you, did I, if Lieut. Drury said anything just before the shot was fired?

A. Yes, sir.

Q. And what was your reply?

A. He did not.

237 H. A. STATENFIELD, called on behalf of the United States Government, being duly sworn, testified as follows:

Direct examination by Mr. YOUNG:

Q. How old are you?

A. Thirty-seven.

Q. Where do you live?

A. East Liberty.

Q. What is your occupation?

A. Traveling man.

Q. For whom?
A. James Bonar & Company.
Q. How were you employed in September of 1903?
A. We were wiring the new shop on 40th street.
Q. Wiring?
A. Yes; for electric light.
Q. What shop?
A. James Bonar & Company.
Q. Where was that?
A. Corner of 40th and the Allegheny Valley Railroad.
Q. Do you recall, on the morning of September 10th, anything unusual happening in that neighborhood?
238 A. Yes, sir.
Q. What was it?
A. Well, when I came down there—I got there between eight and nine o'clock—some of the boys in the shop said to me to look out, that there were boys across the street had got some copper, and they thought they were trying to sell it. There were four or five boys there, and a couple of men that were talking to them.
Q. Who were the men?
A. I didn't know who the men were; they seemed to be junk dealers; they were arguing and dickering for this copper.
Q. What nationality?
A. They seemed to be Hebrews.
Q. And they were dickering with how many boys?
A. I think there were four or five boys there.
Q. Where were the boys?
A. The boys were standing on the railroad track right at the corner of the arsenal.
Q. Where was the copper?
A. The copper was lying there between the railroad track and the arsenal wall.
Q. Was it moved?
A. They seemed to be rolling it around, trying to roll it up
239 tighter, or examining it, or something of that kind.
Q. Who was with you at the time in the shop?
A. At the time we saw them, I believe, Mr. Evans and Mr. Simpson.
Q. Was Mr. Kirk there?
A. I don't think he was right there at that time; he was in the building and may have been standing there.
Q. Had you any conversation with him, or among yourselves in which he was included?
A. Yes; we were all standing there looking, and somebody said we should telephone the officers or the officials about it; and they asked me to telephone; and I said no, I wouldn't telephone to them. The rest of them said they thought it ought to be done; so Mr. Kirk started into the office, and when he got in there he wanted me to telephone, and I said no, I wouldn't telephone or have anything to do with it, and he said he would, and he looked up the number.
Q. Where were you during this time?
A. I was in the office; I had followed him into the office.
Q. Did you help him look up the number?

A. No, sir.
Q. Did he look up the number?
A. I believe he did.
Q. How long did you remain there?
240 A. I suppose I was in the office four or five minutes. I left and went and looked out of the window again and saw them pick this copper up and carry it towards 40th street.
Q. Who picked it up?
A. These boys and the two Hebrews. They picked it up and carried it up there and the other three or four of them walked over and sat down on the steps of James Bonar & Company.
Q. How many boys walked up, if you recollect?
A. I think there was one boys helped the Hebrews carry it up 40th street.
Q. How many bundles were there?
A. I only remember one bundle.
Q. Who had hold of it?
A. All three of them.
Q. How large a bundle?
A. 15 or 18 inches in diameter and 6 or 8 inches long.
Q. What material did it seem to be?
A. It looked like copper.
Q. And they carried it up 40th street?
A. Yes, sir.
Q. And the other three boys?
A. The other three boys came across the street and sat down on the steps of our building.
241 Q. And those steps are where?
A. On the corner of 40th and the Allegheny Valley Railroad.
Q. Three of them came over and sat down?
A. Yes, sir.
Q. Then where did you go?
A. When they came over there and sat down, Kirk came out of the office and said he had telephoned to the arsenal and they would come down, and I said I was going upstairs and see them come down street. So I leaned out of the window to watch them coming down.
Q. Look at that window on map No. 1, and see if that window marked by Mr. Kirk is the one on 40th street.
A. Well, it is the window nearest the corner.
Q. It was on the second floor, was it?
A. Yes, sir.
Q. Was it near the steps?
A. Right at the head of the steps.
Q. No; but the steps on the outside of the building?
A. Directly over the steps on the outside of the building.
Q. When you looked out of there what did you see?
A. I stayed there quite a little while and finally I saw an officer coming out of the street above Willow street, I believe, come along into the centre of the street, and started down towards the railroad, and just
242 after he started down a little piece, the boys said—some of them said, "God, boys, there's the officers," and started to run around

the corner. Just then Drury reached in his belt for the revolver, following after them, and one man ran straight across the track and the rest of them ran around the corner.

Q. When you first saw Drury, where was he?

A. When I first saw him he was just coming out of Willow street.

Q. And when the boys gave the cry indicating that they had seen him, where was he?

A. He was, I suppose, 150 feet from the window, from where they were sitting.

Q. Did they run immediately?

A. As soon as they saw him they broke around the corner, part of them; one of them ran across the track; just at that time I heard a shot.

Q. Where was Drury when you heard the shot?

A. He was about 100 feet, I suppose, from the boys, up along the building.

Q. Up 40th street?

A. Yes, sir.

Q. Where was the shot fired from?

A. The shot sounded to me to be beyond our building.

Q. What did you do then?

A. As soon as I heard the shot I ran around to the window that fronted on the Allegheny Railroad.

243 Q. How far did you have to go to get to that window?

A. I suppose ten or twelve feet.

Q. Is that the window indicated there by Mr. Kirk?

A. Yes; that's the first window next the elevator.

Q. And how many feet from the corner of 40th street?

A. I suppose 10 or 12 feet.

Q. When you looked out there, what did you see?

A. I saw this boy who had gone over the ash pile to the other side of the track, and there were three fellows standing near the corner, and Drury then came around the corner, I believe after them; held them there, and just at that time I looked across the track and saw the soldier and the man that was shot coming—the man was coming from the lumber pile like, and the soldier going over to him.

Q. And where was the man—how far up from the soldier?

A. Maybe 10 or 15 feet.

Q. They were coming towards each other at that time?

A. Yes, sir.

Q. How long was it from the time Kirk returned and said he had telephoned until you saw Drury?

A. I don't know how long that was; I suppose 15 or 20 minutes.

Q. And how long from the time you saw the boys and the Jews carrying the copper up the street, until Kirk came back to you?

A. Well, I suppose, perhaps, it was 10 minutes.

244 Q. Well, do you recall when Kirk came back?

A. No; I don't recall exactly when he came back. I know he came back to where *he* were talking.

Q. How long from the time you left the office until you looked out and saw Drury coming down the street?

A. I suppose about 20 minutes, or something like that.

Q. Did you recognize among the boys that ran the boy you had seen go up the street with the copper?

A. No, sir; I didn't recognize any of them after that.

Q. Could you identify them as the same boys—the boys sitting on the steps—as the same boys that were across the street?

A. Well, I saw them come from the corner there and sit down on the steps, is the reason I knew that was them.

Q. Did they remain there all the time?

A. They remained on the steps all the time, talking among themselves. There seemed to be a dispute among them about dividing the money, or something. They were talking among themselves all the time.

Q. Could you tell anything they said?

A. I couldn't tell. It was too low a tone to hear. There's quite a noise in the shop, and you couldn't distinguish what they said.

Q. Tell us again what the boys said when Drury came in sight.

A. When they looked up and saw Drury coming, they said,

245 "God, there come the soldiers," and started to run.

Q. Had you seen anything unusual about the arsenal grounds or buildings that morning?

A. I don't remember of seeing anything that morning; I don't remember whether it was that morning, but there was one morning remember that the boys attracted my attention to boys upon the roof of a small building, prying something off of the roof of another building.

Q. Are you able to say whether it was that morning or not?

A. I am not; I don't think it was.

Q. What is your best recollection?

A. My recollection is it was the morning before that; I wouldn't say positively as to that.

Q. At what point between Willow street and the railroad track could the boys sitting on the steps, in your judgment, first see Drury coming down, keeping in mind the way he came down the street?

A. Well, if they had looked for him they could have seen him as soon as he got out into 40th street; but the boys were too intent on their argument to see him, I think.

Q. Suppose he was coming down the sidewalk, was there anything to hide their view?

Mr. HAYMAKER. But he said he came down the street.

246 Mr. YOUNG:

Q. If he had come down the sidewalk?

A. Well, if he had come down the sidewalk and been very close to the buildings, the steps there would have hid him.

Q. There is a pair of steps above your buildings on one of those other buildings?

A. Yes, sir.

Q. How were they as to height?

A. I suppose they are four or five feet high?

Q. And do they extend out?

A. I suppose the steps have eight or ten steps to them.

Q. But if Drury came out of Willow street into 40th street, between the curbs, they could have seen him?

A. They could have seen him if they had been looking up that way.

Q. Where was Drury as to those steps you speak of when the boy called out?
A. He was in the street.
Q. Where was he as to those steps when the boy called out?
A. He was near by to where the steps was, or perhaps a little above them.

247 Cross-examination by Mr. HAYMAKER:

Q. Where were you the day before when you saw some boys on the roof of a building?
A. I was in the shop on the first floor.
Q. How long have you been employed by Bonar & Company?
A. Four years.
Q. Been there continuously?
A. All the time.
Q. Work on the second story?
A. I didn't work in the shop only while I was wiring this building.
Q. How many boys or men did you see on the building the day before?
A. I think there were two.
Q. You didn't know who they were?
A. No, sir; I did not.
Q. Not able to identify them?
A. No, sir.
Q. You are not able to say that those two are any part of the number that you saw the next day?
A. No, sir; I couldn't say.
Q. Did you give any alarm the day before?
A. No, sir; I didn't say anything about it.

248 Q. Now, on the morning of September the 10th, what time did you first see the boys near the gutter outside of the yard?
A. Some time between eight and nine o'clock.
Q. You don't know where they got the copper that was there?
A. No, sir.
Q. Where were you standing, or sitting, when you first saw Drury after there had been some telephoning?
A. Leaning out of the upstairs window.
Q. And where was Drury when you first saw him?
A. About 150 feet above where I was on 40th street.
Q. In the direction of Willow street?
A. Yes, sir.
Q. And where was he, on the street or on the sidewalk?
A. He was on the street.
Q. 40th street?
A. He was coming out of Willow street onto 40th street when I first saw him.
Q. And you just saw him as he emerged from Willow street?
A. Yes, sir.
Q. And he came right out into the middle of 40th street and came down 40th?
A. Came sort of across the corner of the pavement into 40th street.

249 Q. And could you see him the entire way?

A. I saw him from there down; yes, sir.

Q. And the boys, you say, when he got within a certain distance, said something about an officer, and jumped up and ran?

A. Yes, sir.

Q. You heard some dispute among the boys, but you can't state what they were saying?

A. They seemed to be disputing over something, but I couldn't tell what it was.

Q. You heard no word?

A. No, sir.

Q. You just assumed that they were disputing about something?

A. Their actions looked as if they were; yes, sir.

Q. What were their actions?

A. They were talking together, and it looked as though they couldn't agree.

Q. You saw no money?

A. No, sir.

Q. They weren't handling any money?

A. Not at that time; no, sir.

Q. And you didn't hear a word they said?

A. No, sir.

Q. Isn't it a fact that, having seen them with the copper and having seen the Jews with the boys, and then they having come and sit on the steps, that you just assumed that they were quarreling about the money? 250

A. That was my thought of it, anyhow.

Q. That's all you had to go by?

A. That's all; it looked that way, and that's all I knew about it.

Q. How close was Lieut. Drury to the crowd when some one made the announcement that the soldier was coming?

A. Well, he was above our shop a little piece; I suppose 150 feet above them.

Q. Was Drury running or walking?

A. He was going pretty fast until they started to run, and then he slacked up and drew the revolver out.

Q. And one of them took across the tracks towards the ash pile and the others took around the corner.

Q. Then you went to the next window on the railroad track?

A. Yes, sir.

Q. Did you hear the shot fired?

A. Yes, sir.

Q. Where were you at that time?

A. I was leaning out of the window on 40th street when I heard the shot.

Q. Then you immediately went to the other window, did you?

A. I went to the other window as soon as I saw the fellows coming down and turn the corner. 251

Q. Did you hear anything else in addition to the shot you speak of?

A. No, sir.

Q. Did you hear any hallo'ing?

A. No, sir.

Q. No shouting of any kind?
A. No, sir.
Q. And when you got over to the window at the railroad street, did you see an officer up towards 41st street—a soldier up towards that street?
A. I didn't notice an officer then; I noticed the two or three fellows that were down at the corner, just as Drury came around there and halted them there.
Q. Who were they, citizens or soldiers?
A. I don't know who they were; I didn't recognize them.
Q. They were in citizens' dress?
A. Yes, sir.
Q. How did Drury stop them?
A. He told them to halt, I guess; I didn't hear what he said.
Q. And was that after the shot was fired?
A. Yes, sir.
Q. Did he have his revolver out then?
A. Yes, sir.
252 Q. Were those men or boys that he halted?
A. Good-sized boys.
Q. Did he have his revolver lifted at that time?
A. No, sir; not at that time.
Q. How was he holding it when he halted them?
A. He was holding it just in his hand.
Q. Then what did he do to them?
A. As soon as he halted them he looked across the track where the soldier was and this boy, and the soldier was helping the boy down, and he appeared to be weak looking, and he helped him down a piece and laid him down, and as soon as he did that he ran over to the soldier, and as soon as he did that I came downstairs and followed him over, too; he caught the artery in his leg and held it there.
Q. Did you see Drury pull his revolver out on 40th street?
A. Yes, sir.
Q. Where was he at that time?
A. He was above our building a piece, I suppose 150 or 125 feet; something like that.
Q. Was that before the boys said, "There comes the soldier?"
A. No, sir; afterwards.
Q. It was afterwards?
A. Yes, sir.
Q. After he pulled the revolver, which way did he travel?
253 A. He traveled right down to the corner, the same way the boys ran.
Q. Did he pay any attention to the boy that ran across the street?
A. He was watching the boy that ran across the street until he came into the boys at the corner.
Q. Did he change his course in coming down 40th street, with reference to the boy that was going to the ash pile?
A. Yes; he crossed next the building.
Q. Then he would be going away from the boy that crossed over to the ash dump?

A. No, sir; he was still going in the same direction—the boy was going away from him.

Q. Did he still keep his revolver in his hand all the time?

A. Yes, sir.

Q. Did he say anything?

A. Not that I could hear.

Q. Was he pointing at any person?

A. No, sir.

Q. Do you remember of his leveling his revolver at a man that was crossing the railroad track just before the other shot was fired?

A. I don't remember that.

Q. Did you watch him all the time?

254 A. I thought I watched him pretty close when he came down there.

Q. Was Kirk alongside you at that time?

A. Yes, sir.

Q. When you left the window on 40th street to go to the window on Railroad street, where was Drury?

A. Drury was coming down then, and he was almost down to the steps.

Q. When you changed your position?

A. Yes, sir.

Q. You and Kirk going over to the window on Railroad street?

A. Kirk remained in the window there looking out on 40th street after I changed to go to the other window.

Q. But you were looking out of the window on Railroad street; when, after you went to that window, did you see Drury?

A. Not until after he came around the corner.

Redirect examination by Mr. YOUNG:

Q. In your judgment could Drury, from the position you saw him when the shot was fired, have seen the soldier who fired the shot?

A. No, sir; it was impossible to see him.

Q. Why?

A. There was a large brick building between him and the soldier.

255 Q. Were you expecting the coming of the soldiers?

A. Yes, sir.

Q. Why?

A. Because we had telephoned for them, and we expected to see some of them coming.

Q. Were the Jews and the boys engaged some time in dickering?

A. Yes; they were quite a while at the corner.

Q. Was there a separation of them, or anything to indicate dickering going on?

A. Yes; they were all arguing about it; didn't seem to agree on it, and finally the two Jews, and I think one of the other fellows, started off with the copper.

Q. I know, but before that, had they separated at any time during their dickering?

A. I don't know whether they did or not; they were arguing among themselves; I don't know that any of them went away from there; not to the best of my recollection.

The court here took a recess until 1.30 p. m.

256 AFTERNOON SESSION.

T. J. EVANS, called on behalf of the United States Government, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you live?
A. 812 Stanton avenue, Millvale, Pa.
Q. Where are you employed?
A. James Bonar & Company (Inc.).
Q. Where is their place of business?
A. On 40th street, at the Allegheny Valley Railroad.
Q. And were you employed there on September 10, 1903?
A. Yes, sir.
Q. How long have you been employed there?
A. Since July 1, 1903.
Q. Do you remember the morning of September 10, 1903?
A. Yes, sir.
Q. Do you remember what you saw across from your bench?
A. Yes, sir.
Q. Your bench is at the window at 40th street?
A. Yes, sir.

257 Q. And what did you see?
A. I saw three or four men standing around on the corner, and a bundle of copper on the corner.
Q. About how many were there?
A. Well, I should judge there were three or four.
Q. Where was this copper?
A. It was right down on the corner by the pole, near the railroad, like in the gutter.
Q. Corner of what?
A. Of the arsenal wall.
Q. On which side, the 40th street side or the railroad side?
A. It was right directly on the corner.
Q. Do you know what they were doing there?
A. Well, no, sir.
Q. How long did you see them there?
A. Well, I suppose I saw them there for about an hour.
Q. And during this time you were working at the bench, were you?
A. Yes, sir; part of the time.
Q. During part of the time?
A. Yes, sir.
Q. Did you have any conversation, without stating what it was, with any of the men in the shop there in relation to what you saw?

258 A. Yes, sir.
Q. Who were the men?
A. Mr. Kirk, Mr. Simpson, Mr. Statenfield, and myself were all talking.
Q. What was the conversation about, without giving what was said?
A. Well, we were talking about fellows on the corner—that they looked very suspicious looking, them standing there with this copper; you could see the roof, so that it was very suspicious looking, that the roof looked bare looking.

Q. The roof of what?
A. Of the arsenal building.
Q. Well, what suggestion was made, if anything, as to these parties?
A. Well, the suggestion was made that the proper authorities ought to be notified.
Q. And who joined in this conversation?
A. I can't just exactly state who all did, but I think we all discussed it between ourselves.
Q. The four that you have mentioned?
A. Yes, sir.
Q. About how far was it from your bench to where you saw these boys at the arsenal wall?
A. It would be about 125 feet.
259 Q. Across the street?
A. Across the street; yes.
Q. And did you have pretty good vision?
A. Well, I had nothing to stop me, only the window.
Q. And do you know whether anybody telephoned or not?
A. No, sir; not that morning.
Q. Then after you saw them there, what did you see next, if anything?
A. Well, I had occasion—I was working around there right along—toolmaker by occupation, and my engines were right there and I was right in that neighborhood all the time, and I could see almost everything going on over there. I saw them kind of bandying among themselves, or something; I thought they were dickering among themselves for the sale of this copper.
Q. With whom? Did you see anybody join them there?
A. Not just then, I didn't; but later on I did.
Q. Go ahead and state what you saw.
A. Well, there were two men come down the street, one had a coat on and one didn't have a coat on; they bandied around there and they didn't appear to strike a bargain, or whatever it was they were on, and they started away again. After a few minutes they come back. One fellow appeared to be opposed to what they were talking about,
260 but one fellow come back and the other followed after him.
Q. What were these two men; what was their business?
A. Well, from what developed afterwards, I suppose they must have been junk dealers.
Q. Do you know what nationality?
A. No, sir; I couldn't just exactly tell.
Q. You say one came back and the other followed him?
A. Yes, sir.
Q. Then what happened?
A. They arrived at a conclusion there, and the two of them picked up a bundle of copper, and another, a young fellow, picked up another small bundle of copper and followed them up the street.
Q. What did they do with them?
A. Well, I didn't see what they did with it.
Q. The two junk dealers picked up the large bundle?
A. Yes, sir.
Q. And one of the young men picked up another bundle?
A. Yes, sir.

Q. And they diappeared, did they?
A. Yes, took them on up the street.
Q. Up what street?
A. 40th.
Q. Did you see what they did with it?
261 A. Well, I got kind of inquisitive, and I looked out of the window, and I saw a wagon just above Willow street, and these two men were then on the wagon. I recognized them by one having his coat on and the other without his coat; the young fellow that went up with them, he came back, and they all gathered together on the steps of the company that I work for.
Q. All this time you were on the first floor of Honar & Company?
A. Yes, sir.
Q. And you were looking out of the same window that Mr. Kirk gave his testimony about?
A. Not altogether all the time out of that one window, because there are three windows along there. The third window up would be the one where I was looking out from where my work was located; but the other window further down—we looked out of that window during the discussion.
Q. About what time did that occur?
A. When I first saw it?
Q. Yes.
A. I suppose it would be about half-past eight or nine o'clock in the morning.
Q. What time afterwards was it when the junk dealers took this away?
A. I suppose it would be in the course of half an hour.
262 Q. What did you do after they carried it away?
A. Well, I had occasion to go upstairs. I use the small gas furnace upstairs to draw the temper for the tools; and as I was up there I sometimes use considerable time to get a piece of steel heated, and I saw Mr. Statenfield and Mr. Kirk standing at the window. They were both leaning out of the window, and I was leaning on their backs, looking down over their shoulders. I couldn't see very much. I couldn't see straight down because of the position I was in and they were in; I could only look out over their heads.
Q. Did you see anybody on the steps under the window?
A. No, sir; not then from the window, but coming up the stairs I could see them sitting on the steps.
Q. Did you see anybody on the steps?
A. Yes; three or four.
Q. Were they the same boys you saw on the other side of the street?
A. Yes, sir.
Q. Then what occurred?
A. We saw the lieutenant coming down 40th street.
Q. Who did?
A. Kirk and Mr. Statenfield.
Q. Did they call your attention to it?
A. I couldn't help seeing it; I was looking right out on 40th
263 street.
Q. Well, tell us what occurred.

A. When I saw him he crossed into the street about 10 feet from our building, and about 100 feet or 90 feet up from the railroad, and I saw him reach in his pocket and pull out his pistol, and he got it in this position like, and then after he got his pistol out, I heard a shot.

Q. Where did you hear the shot?

A. It was behind me, apparently, back through the building; more of a muffled report than a loud report. And I stepped from the window.

Q. You stepped from the window facing on 40th street to what street?

A. Facing the railroad.

Q. Do you know whether or not that was opened or closed at the time?

A. It was closed.

Q. And the one you were looking out of, was it closed or what?

A. It was open.

Q. At the time you heard the shot, where was Lieut. Drury?

A. He would be about 90 feet from the railroad track when I saw him last, but he was just in that position with his pistol.

264 Q. Then you stepped over, you say, to the window facing the railroad?

A. Yes, sir.

Q. What did you see there?

A. I saw a private standing there with his gun, and I saw what turned out to be Crowley afterwards; he was at the lumber pike just turning around, and I think he had his hand up this way—I wouldn't positively state—and started to step back towards the private.

Q. When you first saw him had he already turned?

A. He was just about turning.

Q. Then what did he do?

A. He just raised his hand this way, and then started to limp back; he limped.

Q. Then what did he do?

A. Well, they met together there, and the private kind of took him by the shoulder or the arm—anyway he got weak, and he went down, and just as he went to lay down in the track, Lieut. Drury he come across the track. He still had his pistol in his hand, and he got right down right away and opened his trousers up from the wound, to stop the blood; I saw that was what he was doing, for he laid his pistol down, as near as I could see, and put his knee on it; and then the crowd

265 began to gather around, and I couldn't see very much afterwards.

Q. Where is the first place you saw Lieut. Drury after you heard the shot fired from where you next noticed him?

A. How many feet it would be from where he was?

Q. No, I am not asking feet; but about where he was when you first saw him after the shot was fired?

A. Well, it would be almost directly in front of our building on the railroad track.

Q. Was he already up to the injured man, or was he going toward the injured man?

A. He was going towards him.

Q. Where had you seen him last before the shot was fired?

A. Out of the window we were looking out of.

Q. How far from the railroad?
A. It would be about 90 feet.
Q. On what street?
A. 40th street.
Q. Could you have heard him if he had said anything?
A. Yes, sir.
Q. Did he say anything at the time?
A. Didn't see anything?
Q. Did you hear him say anything?
A. No, sir.
Q. At the time or immediately before the shot was fired?
266 A. No, sir.
Q. At the time the shot was fired, could he have seen the soldier when you were looking out of the window?
A. No, sir.
Q. Why?
A. The corner of our building was in between him and the private.
Q. Did you see the man that was shot?
A. I saw him after he was shot.
Q. I mean after he was shot.
A. Yes, sir.
Q. Were you able to identify him as one of the men whom you had seen?
A. By the clothes he had on.
Q. As one of the men you had seen that morning?
A. Yes, sir.
Q. Could you say which one?
A. Well, by the clothes I identified him as the man that carried the copper.
Q. About how long was it from the time you saw them carrying the copper away until the soldiers came until you saw Lieut. Drury?
A. I don't think it would be more than twenty minutes.
267 Q. Would you please indicate where your bench was, here on map No. 1?
A. Right about here.
Q. At the point indicated by Mr. Kirk?
A. Well, it would be about two inches this side of this, towards Butler street; it would be about six or eight feet.
Q. How many windows are there there?
A. Well, they run the whole length of the building.
Q. Pretty close together?
A. Yes; I don't suppose there is more than 24 or 20 inches between each window.
Q. This window you have just indicated is on the first floor?
A. Yes, sir.
Q. You say you went to the second floor?
A. Yes, sir.
Q. You were looking out of that window there, were you?
A. Yes, sir.
Q. And where did you see these young men with the copper?
A. They appeared to be right about here; right this side of the pole.

Q. Near the corner of the arsenal wall, at the location of the telegraph pole?

A. Yes; nearest the railroad track.

268 Q. And towards the railroad track?

A. Yes, sir.

Q. And then you say you went upstairs?

A. Yes, sir.

Q. Please mark where the window was out of which you looked on the second floor.

A. The window would be right about here.

Q. Well, would it be almost directly over the bench at which you worked?

A. No, sir; it would be directly over about two windows that way.

Q. Two windows toward the railroad?

A. Yes, sir.

Q. And where was Lieut. Drury when you first saw him when you were looking out of that window?

A. He appeared to be about there.

Q. Was he on the street or the sidewalk?

A. He was on the street, about five feet from the curb, in the street nearest to the shop.

Q. And where was the window on the railroad side out of which you looked and saw the soldiers?

A. The elevator is right in this corner here; right from this window across to this window.

Q. Just at the point indicated by the cross mark, marked "window by Kirk?"

269 A. Yes; on the second floor.

Q. About how far was it from the window on 40th street over to the window on the railroad side?

A. Well, I judge it would be about 12 or 14 feet, possibly 15 feet, on the way we stepped it; but on a direct line it wouldn't be more than 12 feet.

Q. Do you understand these lumber piles as you see them on this map?

A. Yes, sir.

Q. And these railroad tracks?

A. Yes, sir.

Q. Can you indicate where you first saw Crowley, or the man who was shot, after you looked out of the window?

A. It would be right about there, on that end of the lumber pile.

Q. Near the east end of the lumber pile?

A. Yes, sir.

Q. At the cross mark marked "C?"

A. Yes, sir.

Q. And where was the soldier at that time, or about that time, as near as you can recollect?

A. Well, I think he was right about here, as near as I can recollect.

270 Q. Right near the switch of the main track?

A. Yes, sir.

Q. Did you see the other soldier?

A. No, sir; not at that time.

Cross-examination by Mr. HAYMAKER:

Q. You were not acquainted with any of the boys before that day?
A. No, sir; nor since, either.
Q. And you don't know that you had ever seen them before?
A. No, sir.
Q. Or either one of them after that?
A. No, sir.
Q. When you saw them at the corner near the telegraph pole you didn't know where they got the copper?
A. Well, no; I couldn't say; but by the looks of the roof I judged they got it there; because I could see the roof.
Q. Was the entire roof copper?
A. Well, I couldn't say that.
Q. What was there about the roof which indicated that this copper might have come from there?
A. The shingles were all torn loose—slate shingles.
Q. Was that something recent?
271 A. Well, it looked that way.
Q. You had never examined it before?
A. Well, I never noticed it; no, sir.
Q. Well, wasn't it due to the mere fact that you saw them there with copper that you came to the conclusion that it was taken off the building?
A. No; I didn't think it would be torn off the building, but it seemed kind of strange to me that the roof looked kind of torn up and them with that copper.
Q. You spoke of shingles?
A. Slates.
Q. Well, they don't usually have slate and copper, too, on the same building, do they?
A. Well, I don't know; I suppose that is the general rule of the Government. They line the building underneath the slate first and then put the slate on top of the copper.
Q. Slate on top of the copper?
A. I think that is the proper way.
Q. Was that done in this case?
A. I think it must have been.
Q. You don't know that positively?
A. No; I was never up there to see.
Q. While the boys were waiting there did these two men come
272 to the boys or did the boys go after the men?
A. The men came to the boys.
Q. While all of the boys were on the corner?
A. No, sir.
Q. Had any of them disappeared?
A. Well, from what I saw, as near as I could say, there was a couple stood on the corner and the others walked around; it seemed to me they were looking for somebody.
Q. But they hadn't gone after the two men that came there, so far as you know?
A. I hadn't seen them; no, sir.
Q. And when they came there there was some dickering, you thought?

A. Yes, sir.

Q. And then the two men started out to 40th street with one of the boys?

A. With one of the boys and the copper.

Q. The two men carrying one piece of copper and the boy carrying the other piece?

A. Yes, sir.

Q. And later on the boys came back and the men drove away?

A. One boy came back.

Q. And then they sat down on the steps of your building?

273 A. Yes, sir.

Q. Did you hear any of the conversation between them?

A. No, sir.

Q. You didn't know what they were talking about?

A. No, sir.

Q. Where was Lieut. Drury when you saw him first after that?

A. Down on 40th street.

Q. Out in the street?

A. Well, not exactly in the middle of the street, but he was 15 feet from the building.

Q. And about how far from the boys at that time?

A. I suppose he would be about 100 feet.

Q. With anything between the boys and Drury at that time?

A. No, sir.

Q. And was he coming down rapidly or slowly?

A. Well, he was coming a good fast walk when I saw him, may be a little bit more than a walk.

Q. Where did he pull his revolver?

A. He pulled it out of his coat.

Q. When?

A. When he got within about 90 feet from the railroad track.

Q. And how far from the boys?

A. I suppose it would be about 75 feet.

Q. What makes you think it was 90 feet from the railroad track?

274 A. Well, I just judged about the distance.

Q. And when he pulled his revolver, in which direction did he walk?

A. Walked straight down 40th.

Q. Just the same as he had been walking before?

A. Yes, sir.

Q. Did he go in the direction of the boys after he pulled his revolver?

A. As soon as I saw him pull his revolver I heard the shot.

Q. Could you hear the shot distinctly?

A. No, sir; it was a muffled shot, or appeared to be to me.

Q. Could you tell the direction of the shot?

A. No, sir, not positively; but I thought it was out the other way.

Q. And at that time you were looking out of the window on 40th street?

A. No, sir; I was looking over the shoulders of the companions that were with me.

Q. But you were looking out of the 40th street window?

A. Yes, sir.

Q. And as soon as the shot was fired, did you go immediately to the other window?

A. Yes, sir.

275 Q. Went to the railroad side?

A. Yes, sir.

Q. On the second floor?

A. Yes, sir.

Q. In which direction was Drury going when you left that window on 40th street?

A. He was still going towards the railroad track on 40th street.

Q. Running or walking?

A. Fast walking.

Q. Did you see the boys when they left the steps?

A. No, sir.

Q. Did you see who was crossing the railroad tracks?

A. No, sir.

Q. Do you know where the cinder pile is?

A. Yes, sir.

Q. Did you see anybody crossing in that direction?

A. No, sir; I couldn't see the boys, looking out over my companion's shoulders.

Q. But you could see out on the railroad track?

A. Yes, sir.

Q. And you could see out on 40th street?

A. Yes, but not straight down; I could across, yes, sir.

Q. When he pulled his revolver out, at what did he aim it?

A. He just pulled it out in this position as if he were trying

276 to pull the trigger up.

Q. You mean trying to cock it?

A. Yes, sir.

Q. Did he hold up one knee, as you have indicated?

A. Well, that's the way I thought he did, when I seen him running. He was going pretty fast, and he just did it this way.

Q. He was running pretty fast at that time?

A. Not very fast, just a swift walk.

Q. As soon as he took it off his knee, how did he carry it?

A. I didn't see much after that.

Q. When you got to the window on railroad street, did you see the other private up towards 41st street?

A. Yes, sir.

Q. When you were at the window on 40th street, did you hear any persons shout or halloo?

A. No, sir; I heard the women, though, kind of wailing and crying, and the crowd began to gather.

Q. That was after the shot was fired?

A. Yes, sir.

Q. But you heard no noise of any kind before the shot was fired?

A. No, sir.

Q. You heard no one halloo?

A. No, sir.

277 Q. You heard no voice that attracted your attention before the shot was fired?

A. No, sir.
Q. You heard no one halloo, "Halt?"
A. No, sir.
Q. How near was that window that you were at to the corner of the building on Railroad street?
A. Do you mean in a straight line?
Q. Yes, sir.
A. It would be about 15 feet.
Q. How far was it from the window on Railroad street over to the point where Crowley seemed just turning around after the shot was fired?
A. It would be about 250 or maybe 200 feet.
Q. How many men worked in that shop?
A. Well, I couldn't just exactly tell you; I could count them, though.
Q. Well, just in a rough estimate.
A. I suppose there would be about 15 or 20.
Q. How many stories high is the building?
A. Two stories.
Q. And you say 15 or 20 working on both floors throughout the entire building?
278 A. Yes; that is, at the present time.
Q. No; at the time of this shooting.
A. No, sir.
Q. How many at the time of this shooting?
A. I don't suppose it would be more than twelve.
Q. Well, did the men work in the building?
A. Yes, sir.
Q. What were they doing there?
A. I suppose they were earning their daily bread.
Q. I mean in what way, what were they working at?
A. Well, there were different positions—the duties that were assigned to them in different parts of the building.

Redirect examination by Mr. MILLER:

Q. Is this a machine shop?
A. Yes, sir.
Q. Is there much noise in it?
A. Well, there is a little once in a while; there's a rumble from the machinery all the time.
Q. There is machinery running in the shop?
A. Yes, sir.
Q. What is the machinery?
279 A. It consists of the tools that are necessary for that kind of business.
Q. They have lathes running?
A. Yes, sir.
Q. Engines?
A. Well, the engine that runs the plant and brass lathes and tool lathe.
Q. Had you ever seen any person there on the roof of the arsenal grounds?
A. On that morning?
Q. I mean prior to that.

A. Yes, sir; I had.
Q. What were they doing?
A. They were working up there.
Q. What were they doing?
A. Well, it looked to me as through they were repairing the roof; they had crowbars prying something on.
Q. Is that repairing, in your judgment?
A. Well, I can't say whether they were repairing or not, but they were working very hard, anyhow; I couldn't see why anybody was taking it off in any other way. It looked as though what was on there had to come off, and I would judge they were going to put new on again.
280 Q. What were they actually doing?
A. Well, they had been prying it off.
Q. How many men?
A. Two.

By the COURT:

Q. When was that?
A. That would be about one week before the 10th of September.

Mr. MILLER:

Q. I think you did say that you observed this boy that was shot after he was shot.
A. Yes, sir.
Q. And were you able to identify him as one of the men you had seen there before?
A. By his clothes; yes.
Q. And which one?
A. The man that carried the copper.
Q. Where to?
A. Up to the wagon.
Q. With whom?
A. Two other men.

Mr. HAYMAKER.

Q. What kind of clothes did he have?
A. Well, he had a brown coat on, and I think he had a dark
281 pair of trousers on and a cap.
Q. What kind of clothing did the other boys have?
A. Well, I couldn't just positively identify them in that way.
Q. This is the only one that you noticed?
A. Yes, sir.
Q. After he was shot, did you go up close to him?
A. No, sir; I didn't go outside of the building.
Q. You simply saw him there at what distance from your window?
A. After he was shot?
Q. Yes.
A. It would be about 55 or 60 ft.
Q. And you didn't see him at any time after that?
A. Not until after he was put in the patrol wagon.
Q. Well, when he was put in the patrol wagon, did you see him?
A. No, sir.

Q. Well, did you see him at any time within 50 ft. of where you were?

A. No, sir.

Q. And there was a crowd around him when you saw him at a distance of 50 ft?

A. Yes, sir.

Q. And you are able to say that the clothes that man had on were the same clothes that some fellow had on there that morning?

A. Yes, sir.

282 By Mr. MILLER:

Q. Did you see him when they were putting him in the ambulance?

A. Yes, sir; in the patrol wagon.

Q. Where were you?

A. Upstairs at the window.

Q. How far was that from you?

A. Well, I think it would be about 10 ft. from the office building, and I could look right down on them.

Q. Did you see him then?

A. Yes, sir.

GEORGE B. SIMPSON, called on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you live?

A. 116 Elizabeth street, Millvale.

Q. Where are you employed?

A. Nowhere at the present time.

Q. You have been employed recently?

A. I was in September; I was employed with James Bonar & Co.

Q. In September?

A. Yes, sir.

283 Q. On September 10th?

A. Yes, sir.

Q. How long were you employed there?

A. About three months.

Q. When did you quit there?

A. Some time in October.

Q. In what capacity were you employed there?

A. I was supposed to be the foreman of the shop.

Q. Well, were you the foreman?

A. Yes, sir.

Q. Do you recall the morning of September 10, 1903?

A. Yes, sir; I do.

Q. Where were you that morning?

A. I was in the shop on the 40th street side, by the windows along there.

Q. Was your attention called to anything there that morning?

A. My attention was called to about four men on the corner of 40th street and the arsenal wall and the railroad siding, with a bundle of what

I supposed to be copper; there were about four, I think, in the party at that time.

Q. About that time was that?

A. Probably about nine o'clock, as near as I can recollect.

Q. How many were in the party did you say?

A. About four.

284 Q. Who called your attention to the man?

A. I believed Mr. Evans called my attention to them.

Q. Were there any other men there at the time?

A. Not that time—when I was first called—but a little later Mr. Statenfield and Mr. Kirk came along, and we all viewed the proceedings that were going on outside.

Q. What were they doing at that time?

A. They were tramping on it and trying to make it in smaller packages, as I would judge; they were bending it up and standing on it, and pressing it down with their weight.

Q. How many of them were there at that ?

A. There were about three of them, and the other was looking on as a spectator.

Q. What did you next do?

A. I looked out a little while later, and two of them had disappeared, and a little while later two other men came along, but not the same that were there at first; in the meantime they had moved the copper up to the corner of the arsenal wall and the telegraph pole.

Q. What had you been doing in the meantime?

A. Well, I went over to my lathe where I was working—that maybe took a minute or two—and then came back, and these men were talking, arguing, I supposed, about the price of it; every once in a while

285 some one would shake his head; and that went on for maybe fifteen or twenty minutes, and one started to go away, and one followed him, and laid his hand on him and coaxed him back; then they argued a little while longer, probably about ten minutes, and then two of them—the two strangers—took up the large bundle of what I supposed to be copper, and another man that had been there in the first place picked up another bundle and walked up the street; and I got kind of inquisitive about where this copper was going to, so I ran upstairs to a window about the middle of the shop, and at that time they had got up to a wagon that had been standing there, and I seen them throw the copper into the wagon, and then one of the men stood on the wheel of the right-hand side facing Fortieth street, and he handed out three different times what I supposed to be money—there seemed to be two pieces of paper in that—then they started down street, and the other one walked on down street.

Q. The man that got the money?

A. Yes, sir. I came on down stairs, and about the time I got down stairs he passed the window where I was; I was just going back to the foundry at the back end of the shop. I staid back in the foundry a little while looking for a castings I was after, and when I came out of the foundry again I seen Lieut. Drury start past the window just as I came out of the foundry. He was coming down Fortieth street

286 at a pretty stiff gait. And when he got opposite the window I saw him go down in his pocket and pull something out, and just

then I heard the report of a shot. I didn't go out immediately to see what had happened, but when I did go out there I seen one soldier on the railroad track, and the other one coming from the upper end of the street, or Almond alley, and this young man, that I afterwards found was shot, was limping, with his shoulder on the soldier, and just as I got out he sank down, they laid hands on him, and laid him on the railroad track.

Q. Did you see Drury?

A. Yes; as he sank down Drury came along, and he was probably about ten feet from the soldier when he set him down on the track.

Q. Did you see anything after that?

A. I went afterwards to where the young man was laying and looked at him and came back to the shop again.

Q. Were you able to recognize him?

A. Yes; I think I could recognize him as the young man that carried the copper and the one that received the money.

Q. About how long was it between the time you saw them carrying the copper away until you heard the shop, or until the soldier came?

A. About twenty-five minutes.

287 Q. You were working around the shop at that time?

A. Yes; I was working around the shop at that time.

Q. You saw them, as I understand you, carrying this copper away?

A. Yes, sir.

Q. Did you see the young man after that, before the soldiers came?

A. I seen him coming back down the street; he passed my window after he had been up the street, then as he came back he passed the window where I working. I wasn't working quite by the window, but a little bit back in the shop.

Q. Do you know where he went?

A. No, sir; not after he passed the window.

Q. Did you see the other young man?

A. No, sir.

Q. Where was that window?

A. The third window from the upper end.

Q. Towards Butler street?

A. Yes, sir.

Q. How near were you to the window when he passed?

A. I would judge about fifteen feet back from the window in the shop.

Q. And you say you saw Lieut. Drury?

A. Yes; just as I came out of the foundry.

Q. Where was he with relation to that window when the shot was fired?

288 A. He was just passing that window.

Q. Would you please indicate that window on this plan?

A. The window that I seen Lieut. Drury would be about there; our foundry is right here, and there are two windows in that, and this was about here that I seen him.

(Witness marks the window indicated by him with his initials.)

Cross-examination by Mr. HAYMAKER:

Q. Do you know where the copper came from that you saw that morning?

A. Well, I am led to believe that it came from the roof of the arsenal building.

Q. Who led you to believe that?

A. Because I seen the boys 23 hours before that prying copper off the roof.

Q. What boys?

A. One of the lads that carried the copper with another boy that I didn't recognize at that time.

Q. Have you told that story to the other side before to-day?

A. No, sir; I didn't tell that, because the question was never put to me in that way.

Q. And when was it that you saw them taking the copper off of that roof?

289 A. On the 9th of September—the day before the shooting.

Q. What time in the day?

A. Between half past ten and eleven o'clock.

Q. Where were you when they did that?

A. I was running a brass lathe, right inside of the shop.

Q. And did you call anybody's attention to it?

A. I think I did.

Q. Somebody in the shop?

A. Yes, sir.

Q. Whom?

A. I think I mentioned it to Mr. Slidelman.(?)

Q. That was the day before?

A. Yes, sir.

Q. How were they taking it off?

A. They had a bar about 3½ ft. long taking it off.

Q. Did you know what they were doing?

A. I didn't suppose they were up fixing the roof.

Q. Did you know what they were doing?

A. The supposition was that they were stealing.

Q. Did you tell anybody else?

A. I think I mentioned it to Mr. Evans.

Q. Did Mr. Evans see it?

A. I don't think he was there that morning.

Q. Did the other gentlemen you have named see it?

A. I don't know.

290 Q. Did anybody else see it?

A. One of the other men in the shop did—Mr. McGinniss.

Q. Which boy was it that was up on the roof that you identified among the boys the next morning?

A. The one that was carrying the copper and getting up, and I supposed received the money.

Q. And do you know anything about that boy later on?

A. No, sir; only that he was the boy that I identified by his clothes as the one that was shot.

Q. How far was it from the window where you were to the point where was getting what you thought was money?

A. That was up just at the corner of Willow street, the first cross street above.

Q. How far from your window?
A. Well, it would probably be a 1,000 yards.
Q. Did you call anybody's attention to that?
A. No, sir. I believe I mentioned it afterwards that I saw them putting it on the wagon.
Q. Were you leaning out of the window?
A. Yes; I was leaning out of the window which was open.
Q. Could you tell what kind of money it was?
A. No, sir; only the first two pieces looked like paper.
Q. What did the other look like?
A. It looked like something heavier, solider than paper.
291 Q. That is a 1,000 ft. from where you were?
A. About a 100 yards, I think I said.
Q. Didn't you say a 1,000 ft?
A. I am not positive whether I said a hundred yards or 1,000 ft.
Q. You couldn't tell, I suppose, the denomination of the paper money?
A. No, sir; not from that distance; the weather was pretty clear the morning and, of course, I could see them handing it over.
Q. And the boy came back down?
A. Down the street; yes.
Q. How long after you saw the boy coming down was it until you saw Lieut. Drury?
A. About ten or fifteen minutes.
Q. And when you saw Drury coming were you looking out of the window?
A. No, sir; I was just coming out of the foundry.
Q. And that was at the other end of the shop?
A. Yes, sir.
Q. Was Drury running or walking?
A. Walking at a fast gait.
Q. Did he have his revolver in his hand when you first saw him?
A. No, sir; I didn't say that.
Q. How soon was it after you saw Drury pull his revolver until you heard the shot fired?
A. It was by the second window—that would be about the third
292 window from the upper end of the building.
Q. Well, it was only a few seconds after you saw him pull his revolver until the shot was fired?
A. Yes, sir.
Q. You could hear that shot very distinctly?
A. No, sir; it was in the building, and the machinery was going.
Q. Then after the shot was fired did you go to the window on the railroad side of the building?
A. No, sir; I went then to the front door; not immediately; I walked leisurely out, perhaps two minutes after that, and by that time the young man that was shot was just walking over to the soldier.
Q. When you came to the front door you were facing 40th street?
A. No, sir; I was facing the railroad on the end of the building—that is our main entrance there.
Q. You had crossed the building?
A. I had walked right straight down the building.

Q. To a door on the railroad side?
A. Yes, sir.
Q. How far from the corner of 40th street?
A. That would be about 20 ft., probably, from the corner of 40th street.
Q. And when you got to that door did you see Drury?
A. When I got to that door Drury was just crossing over,
293 about the second track, to get up to where the young was.
Q. And from where the young man was, could you see out 40th street?
A. How's that?
Q. Could you see out along 40th street from where the soldier was, when you first saw him, after the shot was fired?
A. Which soldier?
Q. I mean the young man that was shot?
A. You could only see on an angle on 40th street from where he was shot.
Q. Suppose you were standing at a point from where the young man was shot, could you see out 40th street?
A. Only a very short distance, and you would go right off on an angle.
Q. You, of course, didn't see the young man at the time he was shot?
A. No, sir; not until just after the thing happened.
Q. Did you hear any noise of any kind immediately before the shot was fired?
A. No, sir.
Q. Or any calls of any kind?
A. No, sir.

294 G. W. McCARTNEY, called on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you live?
A. 127 40th street.
Q. What is your occupation?
A. Locomotive engineer.
Q. How long have you been a locomotive engineer?
A. 43 years.
Q. On September 10th were you a locomotive engineer?
A. Yes, sir.
Q. Where was your run?
A. In the yard, on siding 60, on train No. 9.
Q. That is on the Allegheny Valley Railroad?
A. Yes, sir.
Q. Near the Allegheny Arsenal?
A. Yes, sir.
Q. From what point above the arsenal to what point below the arsenal?
A. I was lying on the sidetrack.
Q. No, I mean where is your run; how far above the arsenal do you run, and how far below the arsenal do you run?
A. Any old place.

295 Q. How far do you go up?
A. Sometimes to 48th street.
Q. And how far do you go down?
A. Down to 20th street.
Q. Do you remember the morning of September 10th?
A. Yes, sir.
Q. Where was your engine then?
A. Lying on siding 60 of train No. 9.
Q. Where was it lying?
A. Between 39th and 40th; what we called the cut-off.
Q. In relation to the arsenal wall—where was it?
A. Where? As near as my judgment goes, about halfway between 39th and 40th.
Q. What, if anything, did you see that morning?
A. Well, I saw two men coming with some copper from top of the wall; they threw it down and started to run; I saw a third coming around, but I don't know any of them at all.
Q. Who was your fireman that morning?
A. Daniel Lomax.
Q. Did he recognize any of them?
A. He said he knowed them.
Q. What did you see?
A. As train No. 9 pulled out I crossed over and come down 39
296 to 38th street, and backed in; that is the only way I could go into 38th street there; and saw a crowd up Almond alley, and I thought somebody was hurt; and I hollered to my brakeman to throw the switch, that maybe I could do something up there with my engine; my fire boy, he got off; and I didn't know any of the soldiers or I didn't know any of the men; I seen the soldiers there, and the fireman told me of the man being shot; but I didn't leave my engine at all; I didn't dare to do that.
Q. Do you know where Mr. Lomax is now?
A. He is sick in bed; I believe he is going to die.

Cross-examination by Mr. HAYMAKER:

Q. What time of the day was it on the 10th that you saw these two men?
A. Well, No. 9 is due at 43rd street at 10.09; as near as I can come to it it was about five minutes after ten.
Q. And where were the two men when you first saw them?
A. On top of the arsenal wall. They throwed it off the top of the garrison wall as close as I am to this lady [referring to the stenographer].
Q. How near were you to them at the time?
A. About six feet.
Q. Did you say anything to them?
A. No, sir.
297 Q. Were you facing them at that time?
A. Yes, sir.
Q. And did you see any of them since that time?
A. I haven't; wouldn't know any of them if they came into this room now.

Q. Did you see Crowley after he was shot?
A. No, sir.

By the COURT:

Q. What time was this?
A. About five minutes after ten in the morning.

Mr. HAYMAKER:

Q. And you know that by your railroad schedule?
A. Yes, sir.
Q. Knew that by the time you were running your trains?
A. Yes; we have to get out of the road.
Q. What wall were they throwing the copper off of?
A. The wall next to the railroad.
Q. Well, but the wall runs along the railroad for quite a distance, doesn't it?
A. From 39th to 40th.
Q. And what part of the wall were they throwing off copper?
A. About halfway.
298 Q. That is, halfway between 39th and 40th streets?
A. Yes, sir.
Q. How much copper did you see them throw off?
A. Well, I couldn't answer that; but I tell you I wouldn't like to carry it.
Q. Do you know how the men or boys were dressed?
A. I didn't pay any attention at all. I saw them when they throwed the copper off the wall and started to run. Then the' come back, got the copper, and took it up as far as Dulany's locomotive yards.
Q. That is, on the siding of the railroad t[illegible]k?
A. The main siding going north.
Q. They had, of course, to cross the railroad track with their copper?
A. They had to cross 1, 2, 3, 4.
Q. Over to Dulany & Company's place?
A. Yes, sir.
Q. What did they do with it when they took it over there?
A. Indeed, I don't know.
Q. Did you see them lay it down over there?
A. No, sir; I had to attend to my work.
Q. I know; but when you saw them last were they standing still or walking on with the copper?
A. I didn't pay any attention to them after that.
299 Q. I know, but you saw them carrying the copper, and they were over near Dulany's and Company's place when you last saw them?
A. Yes, sir.
Q. When you took your eyes off of them were they walking or standing still with the copper?
A. I can't say as to that; I had my own matters to look after.
Q. When you saw them last did they have the copper on their shoulders?
A. The last time I noticed them they were dragging it along; they couldn't carry it.

Q. Was there one apiece or more than one apiece?
A. Oh, it was all rolled up like a lot of tin roofing.
Q. But after it was rolled up, was there just one piece?
A. I am satisfied it was more than one piece.
Q. Suppose there was a large sheet of copper rolled up, you would call that one bundle?
A. Yes, sir.
Q. Did they have more than one bundle?
A. They had all they could take.
Q. Were the boys both carrying the same bundle when they crossed the railroad track?
A. They throwed it down off the top of the garrison wall; the garrison wall is about 15 to 16 ft. on the outside.
Q. That is not what I am trying to get at. When they started from the wall, were they carrying it?
300 A. They were dragging it; they couldn't carry it.
Q. Were they both dragging it, or just one dragging it?
A. Two. Then one come around the corner of 40th street.
Q. That made the third?
A. Yes, sir.
Q. Did he go with the two that were dragging it?
A. Yes, sir.
Q. And they crossed the railroad track over to Dubary's?
A. Yes, sir.
Q. Did you see them come back after that?
A. No, sir; I was very busy.
Q. Do you know Officer Dowd or Drury?
A. I did not then; I do now.
Q. I believe you were their bondsman?
A. I was willing to be.
Q. Well, were you?
A. No, sir; but I was willing to be.

(Counsel for the U. S. Government offer in evidence a statement made by D. J. Lomax, made to Mr. Young, the U. S. district attorney, and taken down by the stenographer, it being agreed by counsel for the respondent that this statement may be read and filed as the evidence of said Lomax, as if taken under oath.)

301 D. J. LOMAX.

Examined by Mr. YOUNG:

Q. Where do you live?
A. I live at 236 45th street, and am a machinist; work for the Globe Manufacturing Supply Co., 24th and Liberty avenue. During the time that this young fellow was shot I was firing on the railroad.
Q. Who was your engineer?
A. Washington McCartney. McCartney and myself were running a shifter in the neighborhood—running a shifter from 40th down to 36th on the Allegheny Valley Railroad, along the arsenal wall. McCartney and I were coming along with our engines from 36th towards 40th; I don't know what time it was; I judge it to be about half past ten or ten; it was along about there.

Q. Along about ten o'clock?
A. Yes, sir.
Q. What did you see?
A. We saw the copper broke from the wall.
Q. Did you see any person throwing it off?
A. Yes, sir; we saw three; I did; I don't know whether Mr. McCartney did or not.

Q. Did you recognize any of the heads?

302 A. Young Crowley and young Kenna. We moved away from there then and went down to 36th street. There was quite a bunch of this copper.

Q. How much would you say?
A. He had that big around [indicating with his arms]; just about reach around it; probably 3 ft. 6 or 4 ft. long, and a bundle you could about reach around; came over in two bundles; one was large and the other one was a smaller one.
Q. Did they come over the wall after them?
A. No; not while I was there; then our engine went down towards 36th street.
Q. Where were you when you heard the shot?
A. I never heard any.
Q. What was it that attracted your attention?
A. Well, we were doing some work; we had a loaf of 15, 20, or 30 minutes, and the engine was laying still. We had about 15 or 20 minutes I wouldn't have anything to do. I looked up the track; I saw the crowd on the track. I said to Mr. McCartney somebody was pinched up there; maybe it was a brakeman. He said we will go up and see what we can do; told me to throw the switch, and we ran up as close to 40th street as we could get, and went over and saw the man that was shot. I did not hear the shot.

303 Q. How long would you say it was from the time you saw the copper going over the wall until you looked up the track?

A. Anywhere from half an hour to an hour. When I saw the man with the copper we ran down to 36th street; we put *put* away eighteen or twenty cars; had fifteen or twenty minutes to wait, and it was during that last interval that I saw the crowd on the track. When we saw the copper we were on the switch, being the track nearest the arsenal wall, and we were not over four feet from where the copper was when it was landed on the ground from the arsenal wall. They put it over just as we were going by. The reason I could see them and identify the heads on the other side of the wall was because I was in the cab of the engine and standing up on a level with the top of the wall, just about, and when the heads of William and the others came up to throw the copper over I could identify them, and I did identify two of them.

304 JERRY KENNA, called by the U. S. Government, sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you live?
A. 347 42d street.
Q. At what are you working?

A. Working in the mill.
Q. Where?
A. At Carnegie's.
Q. What were you doing on September the 10th—were you working?
A. No, sir.
Q. Did you know Wm. Crowley?
A. Yes, sir.
Q. How long had you known him?
A. I have known him for the last three or four years.
Q. Do you know Benny Kountz?
A. Yes, sir.
Q. How long have you known him?
A. A couple of years.
Q. Do you know George Swartz?
A. Yes, sir.
Q. How long have you known him?
305 A. For about two years.
Q. Did you see Crowley, Kounta, and Swartz on the morning of September 10, 1903?
A. Yes, sir.
Q. Where did you see them?
A. Well, I seen Crowley between half-past eight and nine o'clock on 40th street, at the place they call the Bowery.
Q. What, if anything, was done then? Did he say anything to you at that time?
A. No, sir; he just asked me if I had seen Benny Kountz, and I said no. So he went down the railroad.
Q. Who went down?
A. Crowley.
Q. Did you go with him?
A. No, sir.
Q. Where did you next see Crowley?
A. Met him down at the Junction railroad.
Q. How long afterwards was that?
A. That was about half an hour afterwards.
Q. Who was with him then?
A. Benny Kountz was with him then.
Q. Then what did you do?
A. We walked up to 40th street on the Valley railroad.
Q. The three of you?
306 A. Yes, sir.
Q. Then what took place?
A. Crowley told me before when I met him that he had some copper that he had stolen the night before off the arsenal roof, and he asked me if I had seen Benny Kountz, and I said no. Then we come up street and he says, "There goes a rag man; let's get him." So he ran up after the rag man, and me and Crowley stopped. Crowley told Kountz to run up after them, and we would go down and get it. So me and Crowley went down and threw it over the wall.
Q. Where did you get it from?
A. From the inside of the wall.

Q. You and Crowley?
A. Yes, sir.
Q. What did you do then?
A. Threw it over the wall; and just then Benny Kountz come down with the rag man, and the ragman wanted to give him $2.50 for it, and he wouldn't take it.
Q. Where was Swartz at this time?
A. He was over on the railroad.
Q. After the copper came over the wall, what did you do?
A. I left the copper there and started away a piece, and the
307 two Jews started to talk to Crowley. He said he wanted $3.50 for it, and the sheeny wouldn't give it to him. Then Kountz said he wouldn't sell it for $4.00, and then the Jews started away and Crowley sold it for $3.50.
Q. What was done with the copper?
A. Crowley and the two Jews carried it up to Willow street, and put it on a wagon.
Q. Then what was done?
A. He paid Crowley the money then, and he come back down to the steps of the Jas. Bonar Machine Shop.
Q. Who were there?
A. Me, and Kountz, and Schwartz, and Crowley.
Q. Then, what was done after that?
A. We just sat there a while, and then Crowley said, "Let's go over to 43d street," and we wouldn't go there; and we sat there, and Benny Kountz looked up 40th street, and he says, "Here comes the lieutenant." And we started to run, and Schwartz he sat there.
Q. Where did you go?
A. I run up the railroad and Benny run over the ash pile.
Q. Do you know where Crowley went?
A. No, sir.
Q. And where did you go?
A. I went straight up the railroad.
308 Q. What, if anything, did you hear while you were running?
A. Well, we heard the soldier hollon "halt," and he fired.
Q. How often did you hear that?
A. Heard it three or four times.
Q. Did you hear the shot?
A. Yes, sir.
Q. Where were you?
A. Between 42d and 43d streets.
Q. Did you stop?
A. No, sir.
Q. Where did you go then?
A. Went up to 43d street.
Q. Then where?
A. Up to Butler street and staid up on Butler street.
Q. Did you see the money that was paid to Crowley?
A. Yes; Crowley came down and pulled it out of his pocket and showed it to us.
Q. How much money?

A. Three $1.00 bills and a half dollar.
Q. What was he doing with it?
A. He wasn't doing nothing—just had it in his pocket.
Q. Do you know Lomax?
A. Yes, sir.

Q. Do you remember whether or not he passed about the time
309 you were throwing the copper over the wall?

A. No, sir.
Q. Do you remember an engine passing?
A. The engine was standing.
Q. Was Lomax on that engine?
A. Yes, sir.
Q. Who else was on that engine?
A. Wash McCartney.
Q. You know him, do you?
A. Yes, sir.
Q. Where were you when the engine passed?
A. We were standing on the arsenal side of the railroad.
Q. Had the copper *copper* come over at that time already?
A. Yes, sir.
Q. How many pieces of copper were there?
A. Three.
Q. Who carried it up to the wagon?
A. Crowley and the two Jews.

Cross-examination by Mr. HAYMAKER:

Q. At what time in the morning did you first meet Crowley?
A. Between half past eight and nine o'clock.
Q. Was he alone then or with some one?

A. He was alone.

310 Q. Where?

A. On 40th, at the place they call the Bowery, a few steps above Willow street.
Q. You met on the street, or in some place?
A. We met on the street.
Q. Was there any arrangement between you and him as to meeting there that morning?
A. No, sir.
Q. Was that accidental?
A. Yes, sir.
Q. Where were you going?
A. I had just come down out of the house.
Q. Where was he going?
A. He wanted to know where Benny Kountz was.
Q. Well, where were you going at that time?
A. I wasn't going no place.
Q. Were you heading for any place?
A. No, sir.
Q. Hadn't you been down there before frequently?
A. Where?
Q. Where you met Crowley.
A. Yes, sir.

Q. What place was this where you met Crowley? Was it on the street or in a building?

311 A. No, sir; it wasn't no building; it is right on the street.

Q. You were going some place when you met Crowley, weren't you?

A. No, sir; I had no hat or cap on.

Q. You were just walking along the street, without any object in view?

A. Yes, sir; just stepped out of the house and walked out in the street.

Q. How far from the house?

A. Well, it was about fifteen feet.

Q. And when you left the house you didn't see Crowley?

A. I stood there a while and Crowley come down 40th street.

Q. Then you started towards Crowley?

A. No, sir; I stood there, and he said, "Good morning," and I spoke back to him; and he asked me if I had seen Benny Kountz, and I told him no.

Q. Did you know Benny Kountz?

A. Yes, sir.

Q. Then what did you do?

A. Then I went back to the house and Crowley went down to the railroad.

Q. Why did you go back to the house?

A. It was too early to go out.

312 Q. To go out for what purpose?

A. Nobody was down there. To bum around.

Q. Oh, just to bum around?

A. Yes, sir.

Q. You had been out a little?

A. Yes, sir.

Q. And you thought it was too early to bum around?

A. Yes, sir.

Q. And you came to the conclusion that you would go into the house and do your bumming around later in the day?

A. Yes, sir.

Q. When did you come out of the house next, for the purpose of bumming around?

A. About a quarter after nine.

Q. You had been bumming around there on other days?

A. Yes, sir.

Q. You were in the habit of bumming around in that neighborhood?

A. Yes, sir.

Q. How long have you been a bum bumming around in that neighborhood?

A. Oh, I ain't been no bum; I just live around there.

Q. How long have you been living around there?

A. For the last three years.

313 Q. After you went in and came to the conclusion it was time to come out and bum around, what time did you come out?

A. A quarter after nine.

Q. Where did you meet Crowley then?

A. Down at the junction of the railroad.
Q. Did you expect to meet him down there?
A. No, sir.
Q. When you separated you made no arrangement to meet him?
A. No, sir.
Q. Why did you go down there?
A. To pass the time away; down to the river.
Q. Was that where you were in the habit of meeting?
A. No, sir.
Q. You met there often, though?
A. Yes, sir.
Q. That's where you loafed?
A. Down around the river.
Q. You boys all went there frequently?
A. Yes, sir.
Q. They were doing just the same as you were?
A. What?
Q. Well, bumming and loafing?
A. Yes, sir.
314 Q. When you met Crowley down street, it was at what corner or place?
A. At the foot of 41st street.
Q. And was it there that he told you about the copper?
A. No, sir; he told me when I first met him in the morning about the copper.
Q. What did he tell you?
A. He told me if I saw Benny Kountz, and I told him no; he said he had some copper stolen off the roof last night, and he wanted to sell it; and he went down the railroad to see if he could see him.
Q. To see if he could see Kountz?
A. Yes, sir.
Q. Now, then, when you went down to 41st street, you didn't know you were going to meet Crowley?
A. No, sir.
Q. When you first met him there what was he doing?
A. Sitting there talking to Benny Kountz and a couple of more fellows.
Q. What did he then ask you to do?
A. Nothing.
Q. What did you do?
A. We walked from there up 40th street.
Q. The three of you?
315 Q. Then what happened?
A. Crowley says, "There goes the ragman; let's get him." So we run up after him, and Crowley stopped, and Crowley said to Benny Kountz to go up after him, and Benny Kountz went up and brought him down.
Q. Did you see what took place between Crowley and the ragman?
A. No, sir.
Q. What happened after that?
A. Me and Crowley went over and threw the copper over.

Q. How far was the arsenal wall from where you met the junk men?
A. Well, the junk man stood on Willow street with his wagon; and then one came down, and then he called the other one down.
Q. Where had you climbed over the wall?
A. Right at the telegraph pole.
Q. On 40th street?
A. Yes, sir.
Q. How far from the corner of 40th street and the railroad?
A. About five feet.
Q. About five feet from the corner of the railroad track?
A. Yes, sir.
Q. You climbed up the telegraph pole, then, did you?
316 A. Yes, sir.
Q. And then over the wall?
A. Yes, sir.
Q. Where was the copper when you found it?
A. Laying right inside the wall.
Q. Do you know where it was taken from.
A. No, sir.
Q. Nor when it was taken from some place?
A. Only what Crowley said; that he tore it off last night.
Q. How did you get down inside of the wall?
A. We jumped down in.
Q. When you jumped down inside the wall, did you immediately go to work to throw the copper over?
A. Yes; it was right under my hand.
Q. How many pieces were there?
A. Three pieces.
Q. You knew where it had come from, didn't you?
A. Crowley told me he had got it off the roof.
Q. Crowley told you that he had taken it off the roof?
A. Yes, sir.
Q. When?
A. That morning.
Q. Did he say he had taken it off that morning?
A. No, sir; the night before.
317 Q. What time the night before?
A. He didn't tell me.
Q. But he said he had taken it off in the night?
A. Yes. sir.
Q. Did you examine the roof at all?
A. No, sir.
Q. You knew that copper didn't belong to Crowley?
A. Yes, sir.
Q. And you knew it belonged to the Government?
A. Yes, sir.
Q. And when you were helping him throw it over the wall, of course you knew he was stealing it?
A. Yes, sir.
Q. Were you to get part of the proceeds?
A. He didn't say anything about that.

Q. Didn't you know it was a frequent occurrence to go over the arsenal wall and steal copper?
A. Yes, sir.
Q. Had you received the proceeds on other occasions?
A. No, sir.
Q. Had you ever helped to steal copper from there before?
A. No, sir.
Q. You had known Crowley for years, and Kountz, and the rest of them, hadn't you?
318 A. Yes, sir.
Q. And been with them before?
A. Yes, sir.
Q. And right at that corner?
A. Yes, sir.
Q. And had you ever known of them taking copper before from that building?
A. No, sir.
Q. Never heard of them taking copper before?
A. No, sir.
Q. And so far as you know, they had never taken it before?
A. No, sir.
Q. Who was this ragman that you stopped?
A. I didn't know who they were.
Q. Had you ever seen them before?
A. No, sir.
Q. Had you ever done business with them?
A. No, sir.
Q. Had Crowley or Kountz ever done business with the ragmen?
A. No, sir.
Q. When you threw the copper over the wall, did you climb over the wall, immediately then?
A. Yes, sir.
319 Q. Where did you carry the copper?
A. Threw it right over the wall and left it there; I didn't carry it.
Q. Well, it was left there until it was taken by the ragman and Crowley?
A. Yes, sir.
Q. And they carried it up 40th street towards Willow street?
A. Yes, sir.
Q. When the copper was thrown over and was lying there and the ragman came to that place, how many boys were there?
A. Well, there was only the four of us.
Q. Yourself and Crowley and Kountz?
A. Yes, sir.
Q. And who was the other?
A. Schwartz.
Q. When they started away with the copper, did they start up towards Willow street?
A. Yes, sir.
Q. With the three pieces of copper?

A. Yes, sir.
Q. The ragmen were carrying how many pieces?
A. They had two pieces.
Q. One apiece?
A. No, sir; they were folded up.
320 Q. Then Crowley carried the third piece?
A. Yes, sir.
Q. They took all the copper that was thrown over the wall?
A. Yes, sir.
Q. At that time you say that McCartney's engine was standing on the track across there?
A. Yes, sir.
Q. Do you know where Dubarry's place is?
A. Yes, sir.
Q. Was there any copper carried from the wall towards Dubarry's?
A. No, sir.
Q. No copper at all?
A. No, sir.
Q. And none of the boys that threw the copper over the wall went towards Dubarry & Company's?
A. No, sir.
Q. Where did you stay while they took the copper up to the wagon?
A. Well, I walked a few steps away; over to Bonars's steps and sat there.
Q. Until he would come back?
A. Yes, sir.
321 Q. Were you waiting for your share of the proceeds?
A. Well, he didn't say he would give me any.
Q. I know; but you expected to get something?
A. Yes, sir.
Q. And did they give you any?
A. No, sir.
Q. Why?
A. Why, they didn't have it in change, I guess.
Q. When you were at the steps, were there the four boys of you?
A. Yes, sir.
Q. And when you saw Lieut. Drury, which way did you run?
A. I went past the machine shop, up the railroad.
Q. Well, you ran along the wall of the machine shop.
A. Yes; in front of it.
Q. Ran on the pavement or out on 40th street?
A. On the railroad; there ain't no pavement there; I went straight up the railroad track.
Q. Which way did Kountz run?
A. Well, I seen him dash over that way; I guess over towards the ash pile.
Q. How far was Drury from you then?
A. Well, he was about 300 yards away from us.
Q. 300 yards when you first saw him?
322 A. Yes, sir.
Q. And when you started to run?
A. Yes, sir.

Q. He had his revolver out then?
A. No, sir; I didn't see it.
Q. Was he about Willow street when you saw him first?
A. Yes; he was about there when I saw him first; and we sat there awhile and waited until he come down a piece.
Q. But when you saw him first, he was about Willow street?
A. Yes, sir.
Q. And who saw him first?
A. Benny Kountz.
Q. And he told the rest of you?
A. Yes, sir.
Q. Then you waited until he came down—about how close to you before you ran?
A. About 300 yards.
Q. Why didn't you run at first?
A. Because I didn't think he was going to come down all the way.
Q. Oh, yes. And then when he came down to about 300 yards, then you thought he was coming?
A. Yes, sir.
323 Q. And you started to run?
A. Yes, sir.
Q. Did you run rapidly?
A. Yes, sir.
Q. Was he walking or running?
A. He was walking pretty rapidly.
Q. And Kountz, you think, took across the railroad track to the ash pile?
A. Yes, sir.
Q. And you took along the railroad tracks to the end of 40th street?
A. Yes, sir.
Q. And which way did Crowley go?
A. I don't know which way he went; the three of us scattered.
Q. You know which way the other boy went?
A. Sewartz stayed there.
Q. Stayed where?
A. Sitting on the steps.
Q. Did he stay there all the time?
A. Yes, sir.
Q. Well, then, was there any boy that ran up towards 41st street?
A. That was me that ran up there.
Q. Up towards 41st street.
A. Yes, sir.
324 Q. Was there anybody with you?
A. Yes, sir.
Q. Whom?
A. A soldier.
Q. A soldier was after you?
A. Yes, sir.
Q. Where did he run you to?
A. Well, I went straight on up the railroad and he only ran a little piece and stopped.

Q. How far did he run?
A. I guess he ran about a 100 yards after me.
Q. Was he running after you when the shot was fired?
A. I don't know whether he was or not.
Q. How close was he to you?
A. Well, about 20 or 25 ft. away.
Q. Did you at that time see any soldier after Crowley?
A. No, sir.
Q. Do you know where Crowley fell on the railroad track?
A. No, sir.
Q. Has it been pointed out to you since?
A. Yes; it has.
Q. Did you hear a shot fired?
A. Yes; I did.
Q. How far were you when the shot was fired from the point where you have learned that Crowley fell?
325 A. About a square and a half.
Q. And was the soldier after you when the shot was fired?
A. I couldn't tell you; I didn't stop to see; I didn't turn my head.
Q. You didn't look?
A. No, sir.
Q. Well, did you hear anything?
A. I heard a shot fired.
Q. I know, but did you hear anything that indicated that there was a soldier after you?
A. I heard the feet tramping back of me.
Q. Did you hear them on up until the shot was fired?
A. No, sir.
Q. Did you hear anything else that indicated that there was a soldier behind you except the tramping of feet?
A. No, sir; only he hallo'ed "halt."
Q. Where did he hallo'ed "halt?"
A. That was between 41st and Almond alley.
Q. How many times did he hallo'ed that?
A. He hallo'ed that three or four times.
Q. Was that before the shot was fired or after the shot was fired?
A. Before the shot was fired.
Q. Did you see anybody ahead of you when you were running out that way?
326 A. No, sir.

Mr. MILLER:

Q. How old are you?
A. 18 year old.

Mr. HAYMAKER:

Q. Were you at the court-martial?
A. No, sir.
Q. Where do you live?
A. I live 372 Forty-second street.
Q. Where—that is two blocks from 40th street, of course?
A. Yes, sir.

Q. When did you first communicate with the Government on this subject?
A. I don't know what you mean.
Q. When did you first tell any of the officers that you had been with Crowley that morning?
A. Well, not until somebody swore against me up in the arsenal.
Q. Somebody swore against you in the arsenal?
A. Yes; at the court-martial.
Q. Who was it that swore against you?
A. I don't know who it was.
Q. You don't know who it was?
327 A. No, sir.
Q. What do you mean by saying they swore against you?
A. By saying I was there.
Q. Well, you were there?
A. Yes; I am telling you the truth.
Q. Then, why did you get mad about that?
A. Mad about what?
Q. That they swore that you were there.
A. Well, I just got mad over it, on account of me not being there. I wouldn't care if I was there and listened to it.
Q. You mean you got mad because you were not at the court-martial?
A. No; not just because of that.
Q. Well, after you got mad, whom did you tell?
A. I didn't tell nobody.
Q. How did the officers get to know that you were there?
A. Well, Capt. Welsh here he came up to the house after me.
Q. When was that?
A. Oh, he came up about two weeks ago after me.
Q. Well, did you tell any of the officers that you had been with Crowley that morning?
A. I come down to the post-office here, and I talked to Mr. Young there, and told him about it.
Q. Was that before Welsh saw you that you came down here,
328 or after Welsh saw you?
A. Well, I come down once before Welsh saw me.
Q. How long ago was that?
A. I guess about a month or so.
Q. Who told you to come down here?
A. There was a man at the house.
Q. Who was he?
A. I don't know who he was.
Q. What was his business?
A. I don't know, sir.
Q. Did he tell you to come down here and see Mr. Young about it?
A. Yes, sir.
Q. What does that man do?
A. I don't know.
Q. You said that there was a man up at the house?
A. I said he came up to the house.
Q. Did you see him since?

A. No; I didn't see the first man; I was working.
Q. Word was left there for you to come down and see Mr. Young?
A. Yes, sir.
Q. Had you heard then what it was for?
A. No, sir.
Q. Had you any idea what it was for?
329 A. No, sir.
Q. Then it was that you came down here, and did you tell them this story then?
A. Yes, sir.
Q. Did you ever tell this story before you saw Mr. Young?
A. No, sir.
Q. Never mentioned to anybody?
A. No, sir.
Q. With whom do you live?
A. Mrs. Powers.
Q. Are your father and mother living?
A. My mother is dead.
Q. Where is your father?
A. Staying with his mother.
Q. How long have you been living there?
A. Well, I have been living with her ever since my mother died, and I was only a little bit of a tod.
Q. You say you didn't attend the court-martial?
A. No, sir.
Q. How did you hear that some one had told there that you knew all about it?
A. A cousin of mine told me.
Q. Was he at the court-martial?
330 A. Yes, sir.
Q. Well, then, when you got mad about them telling that on you, to whom did you tell it first?
A. I didn't tell it to anybody until I came down to the post-office here, and had a talk with Mr. Young.
Q. Was it right away after the court-martial that you came down here?
A. No, sir.
Q. How soon after?
A. It was a couple of weeks afterwards.
Q. And you came down here yourself after they told that about you at the court-martial?
A. Yes; but not until somebody came up after me.
Q. If somebody hadn't come after you, you wouldn't have come down here?
A. No, sir.
Q. Did you tell anybody about your place about this matter before the man came to your house?
A. No, sir.
Q. When you got mad about it, didn't you tell somebody?
A. No, sir.
Q. Did you tell no one in the house where you lived?
A. No, sir.

Q. Who told you that some man had been at your house and
331 wanted you to come down to this building?
A. Mrs. Powers.
Q. Did she tell you who the man was?
A. No, sir.
Q. Did she tell you to what building you were expected to come?
A. Yes, sir.
Q. What building?
A. This building, the U. S. post-office.
Q. Did she tell you whom you were to see?
A. She said there was a man down there wanted to see me by the name of Young.
Q. Did she say what his business was?
A. No, sir.
Q. And you didn't know?
A. No, sir.
Q. You knew you had been mixed up in the stealing of the copper, didn't you?
A. Yes, sir.
Q. And you not at that time suspicious that you might get into trouble by coming down here?
A. No, sir.
Q. Was there anything said at your house except that you were wanted down at the U. S. post-office building?
A. No, sir.
332 Q. And when you came into the building and saw Mr. Young did you then tell him the entire story?
A. Yes, sir.
Q. About what you had done with Crowley?
A. Yes, sir.
Q. Was there any arrangement made between you and Mr. Young with reference to your position in that case?
A. No, sir.
Q. Nothing said with reference to protecting you for participating in that stealing?
A. Oh, yes.
Q. Well, what was that?
A. Well, he says all the Government wants, he says, is for me to tell the truth and anything like that, and he says, "There will be nothing done to you."
Q. There would be nothing to you if you told the truth?
A. Yes, sir.
Q. Then it was after that that you started in to tell the story?
A. Yes, sir.
Q. But you first had their assurance that there would be nothing done to you if you told the truth?
A. No, sir.
Q. Did you tell the story first?
A. Yes, sir.
333 Q. Then it was after that that he told you there would be nothing done to you if you told the truth?

A. No, sir.

Q. But you had told it all before that?

A. He told me then there would be nothing done to me, and then I told the story, and he said that afterwards.

Q. Then it was after you told the story that Mr. Young said if you told the truth that there would be nothing done to you?

A. Yes, sir.

Q. Told it where?

A. Told it to him.

Q. Well, you had told it at that time?

A. Yes; he says would I come here and tell the truth.

Q. Oh, you were to tell the truth another time?

A. Yes, sir.

Q. Of course, that you were to tell the same story here that you had told Mr. Young?

A. Yes, sir.

Q. That's what you are doing under the arrangement made with Mr. Young at that time?

A. Yes; I am telling the truth here.

Mr. YOUNG:

Q. Don't you recall that I said to you that you wouldn't be detained at the office if you told the truth?

334 (Objected to as leading. Objection overruled.)

Mr. YOUNG:

Q. Didn't I say to you that if you told the truth you wouldn't be detained—you would be allowed to go?

A. Yes; well, I understood you to say that there wouldn't be any harm done me.

Q. That's what I said, that you wouldn't be detained if you told the truth.

A. Yes, sir.

Q. I encouraged you to tell the truth, saying, "You will not be detained if you tell it; we want the truth out of you."

A. Well, I am telling the truth the best way I know.

Mr. HAYMAKER:

Q. Mr. Young encouraged you to tell the truth, did he?

A. Yes, sir.

Q. Did it require a great deal of encouragement in order to have you do that?

A. No, sir.

Q. Then, if he hadn't encouraged you, you wouldn't have told it, I suppose, would you?

A. Yes, sir.

Q. You would have told it anyway?

335 A. Yes, sir.

Q. Then why did you want to find out if it would be all right before you would tell it?

A. I didn't say that.

(Counsel for the Government objects to this as having been asked several times.)

Q. Did Mr. Young tell you that if you would tell the truth you wouldn't be detained?

A. Yes, sir.

Q. Now, was that the word that Mr. Young used?

A. Detained; yes.

Q. Now, was that before you told him the story or after you told him the story?

A. After I had told the story.

Q. Now, see that we understand each other. After you told him the whole story he said to you that if you would tell the truth you wouldn't be detained?

A. Yes, sir.

Q. You mean detained at that time?

A. Detained at that time—I don't know what you mean.

Q. Mr. Young told you if you would tell the truth you wouldn't be detained, didn't he?

A. Yes, sir.

336 Q. What did you think that meant?

A. I thought there wouldn't be nothing done to me.

Q. Nothing done to you when?

A. When this case comes up.

Q. And you were, of course, to tell the same story again in order that there might be nothing done to you?

A. Yes; and tell the truth.

Q. Do you know what the word detained means?

A. No; what does it mean?

Q. Well, I am asking you if you understood at that time what the word detained meant?

A. No.

Q. When, then, when Mr. Young said to you if you would tell the truth you would be detained, you didn't know what he was talking about?

A. Certainly I did.

Q. Well, you thought when you were talking to Mr. Young that the Government might hold you here, didn't you?

A. I thought that; yes, sir.

Q. And then Mr. Young said to you that if you would tell the truth you wouldn't be detained; that was, of course, after you had told the whole story?

A. Yes.

337 Q. Then what did you understand when he said if you told the truth? Did it mean at that time or at some future time?

A. Well, I understood it to mean that I would be left to go then—that I wouldn't get arrested.

Q. If you would tell the whole story when, later on?

A. Yes, sir.

Q. And this is the occasion that you thought Mr. Young meant when he told you that?

A. Yes, sir.

Q. Of course you knew then that you would have to come back here?

A. Yes, sir.

Q. And you knew that you would have to testify?

A. Yes, sir.
Q. And you are here now in accordance with that arrangement?
A. Yes, sir.

Col. E. B. ROBERTSON recalled on behalf of the Government out of order that he may be able to leave the city.

Mr. MILLER:

Q. You testified yesterday?
338 A. I did.
Q. That you were the commanding officer that had charge at Fort Niagara?
A. I did.
Q. And that some time about September 10th, and for some time prior thereto, the Allegheny Arsenal was a subpost of Fort Niagara and was under your command?
A. Yes, sir.
Q. And you have stated about it having been reported to you that depredation had been committed and that certain orders were given by you to apprehend and arrest the thieves.
A. Yes; if possible.
Q. Now, you heard the testimony of Lieut. Drury—you know of the testimony of Lieut. Drury?
A. Yes, sir.
Q. And the testimony of John Dowd?
A. Yes, sir.
Q. Now, I desire to ask you, Colonel, whether, when John Dowd made the arrest, or attempted to make the arrest, and did make the arrest by the shooting of Crowley in the manner indicated by the testimony, he was complying with your orders?
(Objected to as immaterial. Objection sustained.)

339 GEORGE SCHWARTZ, called on behalf of the U.S. Government, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you live?
A. 148 Almond alley.
Q. How long have you lived there?
A. Going on twelve years?
Q. With whom do you live?
A. My mother and father.
Q. How old are you now?
A. I am going on twenty.
Q. Are you working at anything now?
A. No, sir.
Q. Were you in September?
A. No, sir.
Q. Did you know William Crowley?
A. Yes, sir.
Q. For several years?
A. Two or three years, I guess.

Q. And Bennie Kountz?
A. Yes, sir.
Q. How long have you known him?
A. About three years.
Q. Do you remember seeing Crowley, Kountz, and Kenna on
340 the morning of September 10th, 1903?
A. Yes, sir.
Q. Where did you see them first, or either of them?
A. I was coming through the arch down there, coming down the alley from home——
Q. What arch is this?
A. Right above Willow street there; the court there, they call it, an open space there; and I seen them going down the arch.
Q. Whom did you see going down?
A. Crowley and Keenan.
Q. That's Kenna; is that the boy that was on the stand here?
A. Yes, sir.
Q. What is his name?
A. I don't know. I always heard him called Keenan; he says his name is Kenceu.

By the COURT:

Q. You refer to the witness that was on the stand here?
A. Yes, sir.

Mr. MILLER:

Q. Where did you first see him that morning?
A. Going down the arsenal side.
Q. Who was with him?
A. Crowley?
341 Q. About what time was that?
A. About a quarter after nine, or somewhere along there.
Q. Did you go with them?
A. No, sir.
Q. When did you next see them?
A. Seen them on the wall next.
Q. You saw them on the wall?
A. Yes, sir.
Q. Where?
A. On the arsenal wall, along the railroad.
Q. Near the railroad?
A. Right on the railroad, a little piece away, about 3 ft.
Q. How many were on the wall?
A. Two.
Q. Who?
A. Crowley and Kenna.
Q. Was anybody else there?
A. No, sir.
Q. Did you see Kountz?
A. I met Kountz coming down later on.
Q. He came down later on?
A. Yes, sir.

Q. What were they doing on the wall?
A. They were standing up there whenever I seen them.
342 Q. Then what else did you see afterwards?
A. Then I come over, and they came down; the next I seen they were standing there with the copper.
Q. I know, but did they go over into the arsenal?
A. No.
Q. They had thrown it over then?
A. They had thrown what over?
Q. The copper.
A. Yes.
Q. Then what did they do?
A. They stood there, and I met——
Q. Well, did they come down off the wall?
A. Yes, sir.
Q. Then what did they do?
A. They stood there with the copper.
Q. Whom?
A. Crowley and Kenna.
Q. And who else?
A. That's all.
Q. Then what occurred after that?
A. Then I went over across the railroad, and I met Bennie Kountz coming down, and we stopped and had a talk and sat down on the steps. So I seen a ragman coming over Willow street; and he stopped up
343 there, and they went after him to come down, and he came down, and they bargained there over it, and Jews and Crowley carried it up then.
Q. Who sold it to them?
A. I don't know which one sold it to them; Crowley carried it.
Q. You were all standing around it then?
A. No, sir; me and Bennie Kountz were across the street on the steps.
Q. I mean at the time the copper was sold?
A. We were across the street, sitting on the steps.
Q. That was after the copper was sold?
A. While they were selling it.
Q. While it was being sold?
A. Yes, sir.
Q. You were both sitting there?
A. Yes, sir.
Q. Then you saw the ragman come and take the copper away?
A. Yes, sir.
Q. How often did the ragman come before he took it away?
A. He came once and talked there awhile, and then they started to carry it up.
Q. Who was carrying on the conversation about selling it?
A. Crowley and the Jews.
Q. And who else?
A. Kenna.
344 Q. And who else?
A. That was all.

Q. Then they took the copper away?
A. Yes; then they took it up and put it in the wagon.
Q. Where did they take it?
A. Up to Willow street.
Q. Who took it up?
A. Crowley and the two Jews.
Q. How many pieces were there?
A. I don't know; I seen one piece that I mind of.
Q. Do you know what they got for it?
A. No, sir.
Q. Did you hear them say anything about the price?
A. No, sir; I heard Crowley say he wanted $3.50, and the Jew said he could only give him $2.00, or something like that.
Q. Then, after Crowley carried it up, where did the Jews go?
A. Straight up 40th.
Q. With the wagon?
A. Yes, sir.
Q. Did they give Crowley anything?
A. I didn't see them give him anything.
Q. Where did you next see Crowley?
A. He come back down and we sat on the steps there.
Q. How many of you?
345 A. Four of us.
Q. What was said about the money?
A. He didn't say anything about the money, but just said, "Let's go over to 43rd street." And no one seem' to make any break or anything.
Q. How long were you there before the soldiers came?
A. About fifteen minutes.
Q. What occurred then?
A. I saw Lieut. Drury coming down 40th street.
Q. What did you do?
A. Some one said, "Here comes a soldier," and they all started to run.
Q. Where did they go?
A. I don't know which way they went.
Q. Where did you go?
A. I ran around the corner a little piece and then I walked.
Q. Where were you when the shot was fired?
A. About six or seven yards from 40th street.
Q. Where was Lieut. Drury?
A. I guess he was coming down 40th street at that time.
Q. Where was he when you started to run?
A. I guess he was about 200 yards from the railroad, or three, or something like that.

346 Cross-examination by Mr. HAYMAKER:

Q. You say you haven't done any work since September?
A. I have been working around at jobs I get, but not steady.
Q. When have you done any steady work?
A. I don't know; around the first of September I worked for the Adams Express.
Q. That was only for a short time, though?
A. No; about six months.

Q. But you don't work any place steadily?
A. No, sir.
Q. And you don't go to school?
A. No, sir.
Q. And you haven't worked any since of any consequence?
A. No, sir.
Q. Do you loaf around the Bowery?
A. Oh, I go down once in awhile, but not very often.
Q. Now, on this particular morning, where did you see Crowley first?
A. Coming down the arsenal side; coming down 40th on the arsenal side.
Q. And did you meet him as he was coming down?
A. No; he was passing by, and I seen him going down as I was coming through the arch.
347 Q. And who was with him?
A. Kenna.
Q. And did you turn around and walk with them?
A. No, sir.
Q. Did you watch them where they went?
A. No, sir.
Q. When did you next see them?
A. On the arsenal wall.
Q. Where were you going that morning?
A. Down to the river.
Q. What for?
A. A steamboat had sunk and I wanted to go down and see if they would get it up.
Q. What time in the morning was that?
A. A little after nine o'clock.
Q. And you looked back and saw them on the wall?
A. No, sir; when I come up from the river I saw them on the wall.
Q. Oh, you went down the river and saw them on the wall as you came back?
A. Yes, sir.
Q. And how long was that after you had seen them on 40th street?
A. About a quarter of an hour or so.
Q. Well, did they go then inside or outside of the arsenal?
A. I don't know. The only time I seen them was on the wall.
348 Q. And you don't know which way they went?
A. No, sir.
Q. Where did you go?
A. I come up from Willow again, coming down 40th.
Q. When you came up you must have came up near where they were on the wall?
A. The other side of the street.
Q. Are you not able to say where they went from the wall—whether they got down inside or outside?
A. I don't know.
Q. And where were you when you next saw them?
A. Standing outside, beside the copper.

Q. Didn't you know there had been stealing from the arsenal before that time?
A. No, sir.
Q. Did you ever hear that?
A. No. sir.
Q. Did you ever hear of those fellows stealing from the arsenal before?
A. No, sir.
Q. Did you have any suspicion where that copper came from?
A. I thought it came out of the arsenal there.
Q. Out of what part of the arsenal?
A. Out of the lower part of the arsenal, I supposed.
349 Q. From the roof or the inside of the arsenal?
A. I didn't know where.
Q. What made you think it came from the arsenal, if you never heard of it being taken from the arsenal before?
A. Because it was lying there, and they were on the wall.
Q. And that is why you thought it had been taken from the arsenal?
A. Yes, sir.
Q. You thought it had been stolen?
A. Yes, sir.
Q. How much of the money did you get?
A. I didn't get none; I hadn't anything to do with it?
Q. Did you ask for some of the money?
A. No, sir.
Q. After the copper was delivered to the Jews, Crowley came back to your crowd?
A. Yes, sir.
Q. Was there a division of the money then?
A. No, sir.
Q. Was there nobody that asked him to divide?
A. No, sir.
Q. You all sat down together?
A. Yes, sir.
Q. Were you talking about it at that time?
350 A. No, sir.
Q. Was there anything said about the amount of money received by him from the Jews?
A. No, sir.
Q. Who said first, "Here comes the soldier?"
A. I don't mind which one that said it.
Q. You don't know which one said it?
A. No, sir.
Q. Didn't you say that?
A. No, sir.
Q. Weren't you the first man that said, "Here comes the soldier?"
A. No, sir.
Q. Then you ran.
A. I ran around the corner.
Q. Why did you run?
A. Because Lieut. Drury was coming down.

Q. Well, why were you afraid of Drury?
A. I don't know what made me run; I guess after the rest of them.
Q. Do you always run when you see a soldier?
A. No, sir.
Q. You run when you see a policeman generally?
A. No, sir.
Q. Why did you run that morning?
351 A. I don't know.
Q. Isn't it a fact that you ran because you knew that copper had been stolen from the arsenal?
A. I had nothing to do with it. I had an idea that it had been.
Q. Wasn't that why you ran?
A. Yes, sir.
Q. You wanted to get away, and avoid arrest?
A. I was running after the rest of them.
Q. You ran because they ran, and they ran because you ran?
A. I suppose so.
Q. And you all ran because you thought you might be arrested for stealing that copper—isn't that right?
A. Yes, sir.
Q. Which way did you run?
A. Just right around the corner, and then I walked up towards the alley.
Q. Up towards Almond alley?
A. Yes, sir.
Q. Anybody after you?
A. No, sir.
Q. No soldier after you?
A. No, sir.
Q. Did you see which way Crowley went when you started to run?
A. He went up on the railroad track on the left-hand side.
352 Q. Where were you when the shot was fired?
A. About six or seven yards from the corner.
Q. From which corner?
A. Corner of 40th and the railroad.
Q. When you went around the corner you were trying to get away from Lieut. Drury?
A. Yes, sir.
Q. Then, did you see Private Dowd?
A. Yes, sir.
Q. And the other soldier?
A. Yes, sir.
Q. Where were they?
A. They were just about two yards from the corner?
Q. Did Crowley run after you up as far as the corner?
A. Crowley cut right across from the corner like, slanting.
Q. I know, but you ran up with him to the corner.
A. Yes, sir.
Q. And you turned the corner, and he cut across the railroad track?
A. Yes, sir.
Q. And when you came right to the corner, how close were you to the private?

A. About two yards.

Q. Then did you pass Private Dowd and the other soldier?

353 A. Yes, sir.

Q. Did you run rapidly or slowly after that?

A. I ran around the corner and then I walked. I ran slowly until got to the corner and then I walked.

Q. Until you got to which corner?

A. At the corner of the machine shop, right there.

Q. You mean at 40th and the railroad?

A. Yes, sir.

Q. But after you saw the soldiers, Private Dowd and the other officer did you walk or run?

A. Walked.

Q. You walked?

A. Yes, sir.

Q. Now, how far were you from that corner when you heard the shot fired?

A. About six or seven yards.

Q. Did you hear the shot?

A. Yes, sir.

Q. Did you know who was shot at that time?

A. I thought it was Crowley, because they were hollering at him.

Q. Who was hollering at him?

A. One soldier stepped out and hol'oed "halt," holloed "halt, or I will fire," and then he pulled his gun and it wouldn't go off, and then the other soldier stepped out and hallo'ed "halt."

354 Q. What did you do then?

A. I turned around and then I heard the shot fired.

Q. Which soldier was it that first holloed "halt?"

A. I didn't know at the time.

Q. Which one was it from what you have found out since?

A. It wasn't Dowd; it was the other fellow.

Q. How many times did he say to Crowley, "halt?"

A. Once.

Q. Then did you see him point his gun at him after he had holloed "halt?"

A. Yes, sir.

Q. What did he holloed after he had holloed once?

A. He holloed "halt, or I will fire."

Q. And then his gun wouldn't go off, you say?

A. Yes; he snapped it and it didn't go off.

Q. Then other soldier tried to stop Crowley?

A. Yes, sir.

Q. Now, that was Dowd, wasn't it, that took the place of the other private when his gun wouldn't go off?

A. Yes, sir.

Q. How many times did he hollo to Crowley to stop?

A. Only once that I remember of.

Q. What did he say?

A. Holloed "halt, or I will fire."

355 Q. How soon was it after he halloed, "halt, or I will fire," until you heard the shot fired?

A. About a couple of minutes or so.

Q. Well, do you really mean a couple of minutes, or a very short space of time?

A. Yes, sir.

Q. How many steps would you probably take in walking, from the time he first hallooed "halt" until the shot was fired?

A. I don't know; about six or seven, I guess.

Q. Six or seven steps before the shot had been fired?

A. Yes, sir.

Q. That is, walking at the ordinary rate of speed?

A. Yes, sir.

Q. Could you hear the private halloo distinctly to stop?

A. Yes, sir.

Q. And when the shot was fired you were how far away from the man who fired the shot?

A. About 10 or 11 yards; right across.

Q. You were just across the track?

A. Yes, sir.

Q. And you could hear it distinctly?

A. Yes, sir.

Q. Were you walking or standing still when you heard the
356 private say the last time, "halt, or I will shoot?"

A. I was walking slowly.

Q. Looking back?

A. Yes, sir.

Q. Walking away from 40th street?

A. Yes, sir.

Q. Were you walking up along the building?

A. Yes, sir.

Q. The building of Bonar & Co.?

A. Yes, sir; towards the alley.

Q. And looking back all the time?

A. Yes, sir.

Q. And listening?

A. Yes, sir.

Q. And when the shot was fired, did you see the private when he fired the shot?

A. No, sir; I wasn't looking at him.

Q. Not at that time?

A. No, sir.

Q. When you heard the shot did you immediately turn around and look?

A. No, sir.

Q. Why didn't you turn around when the shot was fired?

A. I was going on ahead.

Q. And all this took place before you got to Almond alley?
357 A. Yes, sir.

Q. How far were you below Almond alley when the shot was fired?

A. Right along the railroad there.

Q. You were nearer the *the* railroad than you were to Almond alley when the shot was fired?

A. Yes, sir.

Q. When you did look around after the shot was fired, did you see Crowley?

A. No, sir; I seen him after he was walking back with the soldier.

Q. When you saw him after the shot was fired, he was walking back towards the soldier?

A. Yes, sir.

Q. Suppose you look at this map, marked "Exhibit No. 1;" you see what is marked 40th street, do you?

A. Yes, sir.

Q. And you see something marked here "James Bonar & Co.?"

A. Yes, sir.

Q. Do you recognize that building?

A. Yes, sir.

Q. Do you see the place marked "platform?"

A. Yes, sir.

Q. Do you recognize that?

A. Yes, sir.

358 Q. And a little building called an office?

A. Yes, sir.

Q. And you see some place marked "dwellings?"

A. Yes, sir.

Q. How many dwellings are there?

A. Three.

Q. You know them?

A. Yes, sir.

Q. Now, where is Almond alley, if you know?

A. Up here.

Q. Now, then, when you went around the corner, and you heard the first private say, "Stop, or I will shoot," where were you standing with reference to platform?

A. Right handy to the platform.

Q. Were you between the platform and the railroad, or were you between the end of the platform and 40th street?

A. Between the end of the platform and 40th street?

Q. When you heard the soldier say, "Stop, or I will shoot," where was Crowley?

A. He was about even with the mouth of Almond alley—across the railroad tracks.

Q. And where was the soldier when he hallo'ed, "Halt, or I will shoot"?

A. He was standing about the middle of the track between the

359 lumber pile and the platform.

Q. Then you were in position to see the soldier and Crowley as you were walking pass the platform?

A. Yes, sir.

Q. And were you in position to see both soldiers at that time?

A. No; I saw the two of them out on the track.

Q. When you saw one soldier in the middle of the track, between the platform and the lumber pile, was that the soldier that first hallo'ed, "Halt, or I will shoot?

A. The two of them were standing there—both of them near together.

Q. How close together were they when the private first hallo'ed, "Halt, or I will shoot?"

A. He was across there by James Bonar's machine shop.

Q. Do you mean the soldier was?

A. The one soldier was.

Q. When the first soldier's gun hung fire, where was the other soldier?

A. Whenever the first one went to shoot?

Q. Yes.

A. He was standing over against the machine shop.

Q. When the first soldier's gun failed to go off, what did the other soldier do that was over near the machine shop?

A. He walked out to the track and hollo'ed, "Halt."

360 Q. He went out towards where the other soldier was?

A. Yes, sir.

Q. Did he go up close to the other soldier?

A. I don't mind; not very close to him; about from where I am sitting to the window.

Q. Probably 8 ft. away?

A. Yes, sir.

Q. Was Crowley walking or running?

A. Running.

Q. When the first soldier's gun failed to go off, did he stand still or still run after Crowley?

A. The first soldier was standing still.

Q. The first soldier was standing still when his gun failed him?

A. Yes, sir.

Q. When the second soldier left the Bonar building, after the first soldier's gun failed to go off, did that soldier run over to where the other soldier was?

A. Walking on a pretty good trot.

Q. And then you heard him say, "Halt, or I will fire?"

A. Yes, sir.

Q. Then by the time you could have taken five or six steps, you heard the shot?

A. Yes, sir.

Q. Where were you walking when the shot was fired?

361 A. Handy to the office.

Q. Handy to what is marked "Office" on this plan?

A. Yes, sir.

Q. Were you in position, then, to see both soldiers and Crowley at that time?

A. Yes, sir.

Q. And you did see them?

A. No, sir; I didn't.

Q. Why didn't you?

A. I seen one soldier stepping out, and holloed "Halt," and then I was looking over the other way.

Q. Looking at what?

A. Looking towards the alley, walking along.

Q. You were simply looking straight ahead of you, if you were looking towards the alley?
A. Yes, sir.
Q. After you had passed here, couldn't you see the soldier that was over towards the lumber pile?
A. I was walking straight ahead.
Q. Were they on your right or your left?
A. On the left.
Q. Almost directly to your left?
A. Yes, sir.
Q. And you could have seen them by simply turning your eyes?
362 A. Yes, sir.
Q. Why didn't you turn around and look at them?
A. I kept on walking ahead.
Q. But you heard all that happened?
A. Yes, sir.
Q. You could hear that distinctly, could you?
A. Yes, sir.
Q. No difficulty in hearing that without turning your head?
A. No, sir.
Q. And what you heard you heard distinctly?
A. Yes, sir.

Mr. MILLER:

Q. You were pretty busy about that time, weren't you?
(Objected to, as leading.)
Q. Did you see where Jerry Kenna went?
A. No, sir.
Q. Well, Jerry was one of the four at the time the soldiers came?
A. Yes, sir.
Q. Did you see where Kountz went?
A. No, sir.
Q. The only one you saw was Crowley?
A. Yes, sir.
Q. How many soldiers did you see?
363 A. Two.
Q. And you first saw them around the corner?
A. Yes, sir.
Q. Did you follow the soldier or did the soldier follow you?
A. Well, I ran around the corner and ran into the soldiers, and they went out after Crowley and the others, and I walked up ahead looking back.
Q. You say that one of the soldiers attempted to shoot, and the gun didn't go off?
A. Yes, sir.
Q. How do you know that?
A. Because I heard the trigger kinder click.
Q. Do you know whether that was pulling the gun or the trigger?
A. He had it up to his shoulder.
Q. What soldier was that?
A. It wasn't Dowd; it was the other fellow.
Q. Where did he go?

A. He stepped out on the track and holloed "Halt."
Q. Did he keep on running?
A. No, sir.
Q. What did you do?
A. I kept on walking slowly ahead.
Q. Where did you go?
A. After the shooting occurred I went up home.
364 Q. Did you go on ahead up Almond alley or did you turn around and come back?
A. Went ahead up Almond alley.

The hearing here adjourned until Wednesday, February 24th, at 10 o'clock a m.

365 And now, Wednesday, February 24, 1904, at ten o'clock a. m., met persuant to adjournment.

BENJAMIN KOUNTZ, a witness called on behalf of the United States, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. How old are you?
A. 21 years.
Q. Where do you live?
A. 134 Forty-first street.
Q. You knew William Crowley?
A. Yes, sir.
Q. How long had you known him?
A. 5 or 6 years.
Q. How old was Crowley?
A. About 19.
Q. Do you know Kenna?
A. Yes, sir.
Q. And George Swartz?
A. Yes, sir.
Q. I want to call your attention to the tenth of September, 1903. Do ou recollect the day that Crowley was killed?
A. Yes, sir.
Q. When did you first see him that morning?
A. About 9.30.
Q. Where?
A. At the railroad.
Q. Whereabouts on the railroad?
A. Corner of 40th and the railroad.
Q. What was he doing?
A. He was standing there with Jerry Kenna.
Q. Well, just where?
A. Right there at the foundry—Bonar's machine shop.
Q. What were they doing?
A. They were just standing there when I came there.
Q. What happened next?
A. Well, when I came down there we stood there a little while and Crowley saw a ragman coming down toward the railroad and

told me to tell them he wanted them, which I did, and when I came back down I saw Crowley and Kenna on the wall, and there was some copper on the ground.

Q. Where were Crowley and Kenna?

A. On the wall.

Q. Where on the wall?

A. Right there at the railroad.

Q. What part of the wall?

A. Right at the corner of Fortieth and the railroad.

Q. What were they doing?

A. They were standing up there.

Q. On the wall?

A. Yes, sir.

Q. You said something about copper?

A. I saw copper laying between the railroad tracks.

Q. On which street?

A. Right near Fortieth street.

Q. Was it on the corner of 40th street or on the railroad?

A. On the railroad.

Q. What did they do then?

A. The ragmen came down and they started selling it. I was on the other side of the street.

Q. Who were you with?

A. George Swartz.

Q. Did you go over to them?

A. No, sir.

Q. Who sold the copper?

A. Crowley sold the copper.

Q. Then what happened?

A. They carried it up the pavement.

367 Q. Who did?

A. Crowley and the two Jews.

Q. Where was the wagon?

A. Corner of 40th and Willow streets.

Q. The two Jews and Crowley carried the copper?

A. Yes, sir.

Q. How many bundles were there?

A. Three bundles.

Q. Did each of them have a bundle?

A. Yes, sir.

Q. Did Crowley have one?

A. Yes; he had a bundle, too.

Q. Which side of the street was the wagon on?

A. The left-hand side of Fortieth going up.

Q. Which side did they come up?

A. The right-hand side.

Q. What did they do with the copper?

A. Put it in the wagon.

Q. Did you see anything given Crowley?

A. Why, they handed something out of the wagon which I took to be money.

Q. How far away were they?
A. About 200 yards.
Q. That would be how many feet?
A. 600.
Q. What did Crowley do then?
A. Crowley came back down to the railroad.
Q. Where did you stand at that time?
A. At Bonar's machine shop.
Q. Who were with you?
A. George Swartz and Jerry Kenna.
Q. When the Jews and Crowley started up with the copper where did Kenna go?

368 A. He came over to where Swartz and I were standing.
Q. Where did Crowley come to?
A. He came to the same place where we were.
Q. How long did you stand there after Crowley came back?
A. About ten or fifteen minutes.
Q. Did you hear Crowley and the Jews dickering?
A. Yes, sir.
Q. Did you hear the prices that were talked about?
A. I heard them talking about prices.
Q. Did you hear some prices named by either the Jews or Crowley?
A. The Jews wanted to give three dollars and Crowley did not want to sell for that. Crowley asked me what I would sell it for if I had anything to do with it. I said I wouldn't sell it for less than four dollars.
Q. Where were you at that time?
A. I was across the street. He hollered over, and I said that if I had anything to do with it I wouldn't sell for less than four dollars.
Q. Then, how long after Crowley came down to you, Swartz, and Kenna was it before there was anything else happened?
A. Why, about ten or fifteen minutes.
Q. What were you doing in the meantime?
A. We were not doing anything.
Q. Well, what were you talking about?
A. Something; I couldn't recollect now.
Q. When Crowley came back did he say anything about the money?

369 A. No, sir.
Q. Well, didn't you talk to him about the money?
A. No, sir.
Q. Did you see the money when he came back?
A. I did not.
Q. Anything said about it?
A. Nothing said about it; no, sir.
Q. Well, you say it was about how many minutes?
A. Ten or fifteen minutes.
Q. What happened then?
A. I looked up the street and saw Lieutenant Drury coming down.
Q. What did you say or do?
A. I said "Here comes the lieutenant."

Q. Were Crowley and the rest standing there then?
A. Yes, sir.
Q. Just give us the words that you said.
A. I says, "Here comes the lieutenant."
Q. What did you do then?
A. We all ran.
Q. Which way did you run?
A. I ran straight across the railroad track up over the cinder pile.
Q. Where did the other men run, if you know?
A. I don't know.
Q. Didn't you see them?
A. No, sir.
Q. Did you see any of the soldiers?
A. I did.
Q. Where?
A. As I passed the corner of Bonar & Company's shop.
Q. Where were they?
A. They were standing about 7 feet from the corner.
370 Q. Who was running with you?
A. No one.
Q. Did you all start together?
A. Yes, sir.
Q. When you called out, "Here comes the lieutenant," or whatever you said, were you standing or sitting?
A. I was sitting.
Q. Where?
A. On Bonar's machine shop steps.
Q. Where was Kenna?
A. He was there; I don't know whether sitting or standing.
Q. Was Crowley there?
A. Yes.
Q. Where was Swartz?
A. He was there too.
Q. Was he sitting or standing?
A. Another one was sitting, but I don't know which one. I don't know whether it was Swartz or not.
Q. Did you all start to run together?
A. Yes, sir.
Q. Were you ahead?
A. I was ahead.
Q. Did you have to pass through the others to get out?
A. No, sir.
Q. Don't you know whether you ran towards the corner together in a bunch?
A. I was ahead of them.
Q. You did not see them after you started?
A. No, sir.
Q. But you saw the soldiers as you ran?
A. I heard somebody hollering "Halt." I took a little glance around and saw them.
Q. Which way were the soldiers facing?

A. 40th street.

371 Q. Did you understand the cry of "Halt" to be directed to you?

A. Yes, sir.

Q. How many times did you hear it?

A. 3 or 4 times.

Q. Did you hear anything else?

A. No, sir.

Q. Do you know which of the soldiers, as you have seen them since, called out that?

A. No, sir; I don't.

Q. What is the next thing that you heard?

A. That is all I heard of it.

Q. Did you hear any shot fired?

A. Yes, sir.

Q. Where were you when you heard that?

A. Up over the cinder pile.

Q. Where did the shot appear to be?

A. Well, it seemed to be around where I was, on the right side of me.

Q. Did you look when you heard the shot?

A. Yes, sir.

Q. As you went up on the cinder pile, how did you go over it?

A. I went up; right up and down over it.

Q. Where did you go then?

A. I went to 36th street.

Q. Any buildings there?

A. No, sir.

Q. Were there any cars there?

A. Yes, sir.

Q. Did you hide among the cars?

A. No, sir; I kept straight on up the railroad to 36th street.

Q. Where did you go then?

372 A. I went up to Butler street and went home.

Q. Had you ever been inside of the arsenal wall?

A. No, sir.

Q. Had you ever taken any copper off the arsenal buildings?

A. No, sir.

Q. Did you ever see any copper on the outside?

A. Only that there what I saw that morning.

Cross-examination by Mr. HAYMAKER:

Q. With whom were you living at that time?

A. Boarding with my sister.

Q. Your father and mother living?

A. Father is; mother is not.

Q. Where is your father living?

A. In Indiana.

Q. How long had you been with your sister?

A. Two and one-half years.

Q. Where was her place?

A. 160 45th street.

Q. Were you working at that time?

A. No, sir; I wasn't working at that time.

Q. How long since you had been working?
A. A little over a month before that.
Q. What were you doing?
A. Locomotive fireman.
Q. How long were you a locomotive fireman?
A. Well, I fired about 19 months.
373 Q. What have you been doing since?
A. I am firing again.
Q. Had you ever seen anybody taking copper out of there before?
A. No, sir; I didn't.
Q. No person whatever?
A. No person whatever.
Q. Did you ever see anyone working at the roof, trying to take it off?
A. No, sir; I didn't.
Q. Are you working now?
A. Yes, sir.
Q. When did you begin to work after this shooting?
A. About a month and a half.
Q. And have been working ever since?
A. Yes, sir.
Q. Had you been with these other boys frequently before that day?
A. No, sir.
Q. Had you been with them occasionally?
A. No, sir.
Q. Was this the first day you were ever with them?
A. It was the first day for about five or six months.
Q. Five or six months before then had you been with them frequently?
A. Not frequently.
Q. Well, where did you see them?
A. Around that corner in the evening.
Q. Were you not with them there frequently?
A. Not frequently.
Q. What were you doing around the corner with those other fellows?
A. Just stood around there and talked.
Q. Why did you go to that particular corner?
A. Didn't care to go to any other place.
Q. And what did you do?
374 A. Stood around there and talked, that is all.
Q. How late at night?
A. Nine and ten o'clock.
Q. Were you with those same fellows through the day occasionally?
A. No, sir.
Q. You were with them almost every night?
A. No; not almost every night.
Q. Well, how often?
A. Oh, about two nights a week.
Q. Now, on this particular morning, the tenth of September, how did you happen to be with them that morning?
A. Why, I went down to look for work that morning and was running around on the locomotive I used to fire to see if I couldn't get a

job. I walked up and down the railroad to see if I couldn't see the engine laying there.

Q. Did you meet them before you got to the raiload track?

A. The second time I did. I was down to the railroad and came back up again, because I couldn't see the engine around there. It doesn't stay at one place.

Q. Were the other boys sitting there when you got down?

A. Two of them were.

Q. Was there anything said to you about what they were going to do?

A. No, sir.

Q. Well, what did they first say to you?

A. There was a ragman coming down towards the railroad, and they asked me if I wouldn't go up and tell him to come down, which I did.

375 Q. Which way were you coming when they said that?

A. I was coming down Fortieth street at that time.

Q. How near were you to them when they told you to get the ragman—close enough to hear a conversation?

A. No, sir.

Q. Well, didn't you say they told you to go up and tell the ragman to come down?

A. Yes; he called to me and told me that.

Q. Where was the ragman?

A. Why, he was a little above Willow street.

Q. You were on 40th street?

A. Yes, sir.

Q. You were coming towards the boys?

A. Yes, sir.

Q. Which one hallooed for you to go up and get the ragman?

A. Crowley.

Q. How far were you from the boys when they called to you?

A. 25 or 30 feet.

Q. How far was the ragman?

A. About 200 yards.

Q. What boys were there at that time?

A. Crowley and Kenna.

Q. Some one called to you to go and get a ragman?

A. Yes, sir.

Q. Who did you say were there?

A. Jerry Kenna and William Crowley.

Q. Just those two?

A. Yes, sir.

Q. Had you seen them before that morning?

A. I didn't.

Q. What did you do?

A. I went up and told the ragman to come down.

Q. Was the ragman standing or driving down 40th street?

A. He was standing at that time.

376 Q. You met him as you went up?

A. I did.

Q. What did they explain to you they wanted with the ragman?

A. They didn't say; I didn't know why they wanted him.

Q. You knew where they lived?
A. Yes, sir; one was near home
Q. Which one was that?
A. Kenna.
Q. When did you see the copper first?
A. After I had told the ragman to come down.
Q. You did not ask what they wanted the ragman for?
A. No, sir.
Q. Nor did you know?
A. No, sir.
Q. Didn't have any idea?
A. Had an idea they wanted to sell him something.
Q. You knew, didn't you, that those boys were in the habit of stealing stuff?
A. No; they were not in the habit.
Q. Never knew of them to steal anything before?
A. No, sir.
Q. That was the first time you ever knew them to steal anything—rags, junk, or anything?
A. Yes, sir.
Q. Then when they called to you you went right up and got the ragman without question?
A. Yes, sir.
Q. Did you get the ragman?
A. Yes, sir.
Q. What did you tell the ragman?
A. Told him 2 men wanted him.
Q. You went down along and saw them load up and go away?
A. Yes, sir.
Q. You were surprised?
A. I was surprised, of course.
Q. You supposed it had been stolen?
A. I didn't know where they got it.
377 Q. Well, what were you surprised at?
A. I was surprised at the copper they had.
Q. Did not have any idea where they got it?
A. Well, I saw some of them on the wall. I suspicioned where it had come from.
Q. Well, you hadn't seen the copper?
A. I didn't before I came down after I told the ragman.
Q. When did you see the boys on the wall?
A. Why, they were on the wall when I came down.
Q. That is, after you went up for the ragman and had come down?
A. Yes, sir.
Q. What were they doing when they told you to tell the ragman to come down?
A. They were just standing there.
Q. And when you came back you saw them on the wall?
A. I did.
Q. You knew they had copper then?
A. Yes, sir.

Q. And you knew where they got it?
A. I suspicioned. I thought that they got it from the arsenal.
Q. You saw them take it away?
A. Yes, sir.
Q. And you stayed there until Crowley came back and then until the officers came?
A. Yes, sir.
Q. And what did you say when you saw the officers?
A. "There comes the lieutenant."
Q. Did you start to run?
A. I did.
Q. You ran towards the ash pile?
A. Yes, sir.
378 Q. When you jumped up and started to run you were ahead?
A. Yes, sir.
Q. And you turned and ran across the railroad tracks?
A. Didn't turn; just kept on going straight ahead.
(Map shown witness.)
Q. You recognize a point at the corner of 40th street and the railroad marked "Telephone pole?"
A. I do.
Q. Do you recognize a mark on Plan No. 1 called "Steps, James Bonar and Company?"
A. Yes, sir.
Q. Now, where were you when you started to run; on those steps that I have mentioned?
A. Yes, sir.
Q. And when you started to run, which direction did you travel?
A. I ran across the railroad.
Q. Ran down Fortieth street and across the railroad?
A. Yes, sir.
Q. In the direction of the ash pile and up over it?
A. Yes, sir.
Q. Did you run rapidly?
A. Yes, sir.
Q. At no time did the others get ahead of you?
A. No, sir; I don't know. I didn't see any of them ahead of me.
Q. When you were running from the steps did you run close to the wall of Bonar and Company; and where were you when you first noticed the two soldiers?
A. About two or three paces from the corner.
Q. Where were the soldiers when you saw them first?
A. Standing back a little from 40th street.
379 Q. You mean up along the wall of Bonar & Company?
A. Yes, sir.
Q. Did you see any of the other boys as you were running?
A. No, sir.
Q. Were the two soldiers together when you ran past the corner?
A. They were close together.
Q. Standing or walking?
A. I couldn't remember.

Q. Could you hear the other boys running behind you?
A. No, sir.
Q. Did you see which way the other boys went?
A. No, sir.
Q. Either one of them?
A. No, sir.
Q. Did you not see one of the boys after you started to run?
A. I did not.
Q. You did not look back?
A. No, sir.
Q. How close were you to the soldier when he called halt?
A. About seven or eight feet.
Q. Did you halt?
A. No, sir.
Q. Did you hear him call "Halt," again?
A. Yes, sir.
Q. Was that for you?
A. I guessed it was for all of us.
Q. How many times did you hear him?
380 A. Three or four times.
Q. Did one or two of them call?
A. I couldn't say.
Q. Did you hear the shot?
A. I did.
Q. Where were you when the shot was fired?
A. Over the cinder pile.
Q. You were running?
A. Yes, sir.
Q. Well, from the time you left the steps until you heard the shot fired you were running as fast as you could?
A. Yes, sir; as fast as I could.
Q. Did you look back when you heard the shot fired?
A. I did.
Q. Do you know where the soldier was when he fired it?
A. I don't.
Q. When did you tell anyone that you were with the boys at this time?
A. Never told no one.
Q. How did you happen to be subpœnaed here?
A. That is more than I can tell.
Q. When were you subpœnaed?
A. I don't know. I can tell in a minute—26th day of September I was subpœnaed to the court-martial.
Q. You were subpœnaed to appear before the court-martial?
A. Yes, sir.
Q. Did you appear before the court-martial?
A. I did.
Q. And testified?
A. I did.
Q. At the court-martial you, I suppose, told the same story that you have been telling here?

A. I guess so.

381 Q. Have you ever been arrested at any time since for complicity in these depredations?

A. No, sir.

Q. Who was it that first saw you about this after the day of the shooting?

A. Corporal ———, one of the soldiers.

Q. Corporal who?

A. I don't know his name.

Q. Where did he see you?

A. Saw me walking up Forty-first street. I got the subpœna when he met me.

Q. Did you tell him then that you had been there?

A. No, sir; he just gave me a subpœna and told me I was to be down to the court-martial.

Q. Have you been down to the United States building since that time?

A. Yes, sir.

Q. How many times?

A. Once.

Q. Told your story here, did you?

A. Yes, sir.

Q. When was that?

A. Well, about two weeks ago; I don't just remember the day.

382 GEORGE D. DUBARRY called by the United States.

Direct examination by Mr. YOUNG:

Q. What is your business?

A. Lumber.

Q. Where do you live?

A. I live 5321 Penn ave.

Q. What ward?

A. Nineteenth Ward.

Q. Where is your place of business?

A. Between 40th and 41st street.

Q. How far is that from the arsenal wall?

A. I should judge that would be in the neighborhood of about 400 feet, likely.

Q. And it is near the scene of the shooting?

A. Yes, sir.

Q. Were you in your office at the time of the shooting?

A. Yes, sir.

Q. Do you know about what time it was?

A. I couldn't remember the hour. It was in the morning.

Q. Where were you when you heard the shot?

A. Sitting in the office.

Q. What part of the office?

A. In the part that would be facing the Allegheny River.

Q. And your back was toward the Allegheny Valley Railroad?

383 A. Yes, sir.

Q. And the sound of the shot came from the direction of your back?

A. Yes, sir.

Q. There were windows and doors in your office so that you could see out?

A. Yes, sir; there is a partition in the office that has windows in it, and the front door was open.

Q. How far is your office from the railroad track?

A. I suppose to the track perhaps it is about 24 feet.

Q. What is between your office and the railroad track?

A. Some lumber piles.

Q. You have a lumber yard there?

A. Yes, sir.

Q. Now, on this day when you heard the shot just describe what you saw and what you did.

A. Why, when I heard the shot the bookkeeper made the remark "there's somebody shot." We were both there at the time.

Q. Who is your bookkeeper?

A. Frederick Beerman.

Q. Well, go on; what did you see and do?

A. I looked out and saw a man right at the lumber pile in front of the office. I immediately ran out and jumped on top of the pile and ran over right alongside of this man that was shot. I thought he was shot in the foot because he kind of dragged it.

384 Q. Now, where was the man who was shot when you first saw him?

A. Right at that pile—going right along the pile. He stopped and turned and faced toward Almond alley.

Q. What direction was he going immediately after you saw him—toward what street?

A. Why, he was not going towards any street; he was going up the Valley Railroad?

Q. Towards 41st street?

A. Yes, sir.

Q. Then how far did he walk until he turned?

A. Just a few steps; he stopped right at the end of the pile.

Q. Where did he go then?

A. Straight across the tracks towards Almond alley; then he walked down towards what would be 40th street, diagonally across the track.

Q. Who, if anybody, did you see in that direction?

A. I saw one of the soldiers.

Q. Then what occurred?

A. When he got to the soldier the soldier held out his hand to him and he dropped right there on the spot.

Q. Did you see the other soldier at that time?

A. I saw another soldier at the foot of Almond alley.

Q. That was right directly in front of you as you came out of the office?

A. Yes, sir.

385 Q. What position was he in?

A. Well, he was in the position of just lowering his gun when I saw him. I thought it was him that had shot the man.

Q. What did you do next?

A. I walked across and asked him what he shot him for, and he said for stealing copper.

Q. Then, what position was the other man in?

A. He was coming up toward Crowley.

Q. What position was he in?

A. He was carrying his gun in his hand, and when he got up to Crowley he reached his hand out to him and let him down.

Q. Did you notice whether or not he was wounded?

A. Well, I seen the blood on his foot and thought he was.

Q. The lumber pile was immediately in front of your office?

A. Yes, sir.

Q. At that time how high was it?

A. I should judge it was three feet to the top of it.

Q. That is on the side toward your office?

A. Yes, sir.

Q. Then on the railroad side how high was it?

A. Four feet, probably a little over; it might be 4½ feet.

Q. Is the pile the same to-day as when the shot was fired?

A. Not entirely the same. What I would call the rear pieces are the same, but the front pieces are not.

Q. Is the piece that the bullet first went through still there?

386 A. Yes, sir.

Q. That is one of the crosspieces running at right angles with the railroad?

A. Yes, sir.

Q. That is still there?

A. Yes, sir.

Q. Just as you discovered it that day?

A. Yes, sir.

Q. How far is the bullet hole from the end of that piece?

A. From the end of the first crosspiece I think it is about a foot, but I would not be positive. We jacked up the lumber pile and took out one of the crosspieces.

Q. Mr. Dubarry, on that day were there any passageways leading from the railroad track along this lumber pile?

A. Yes, sir.

Q. Was there one on the lower side?

A. Yes, sir.

Q. About how wide was that?

A. It was very narrow—I never measured it—but it was wide enough for the letter carrier to squeeze through. We left it open expressly for the letter carrier.

Q. How far did this lumber pile extend from your office up and down the railroad?

A. Why, the lumber pile itself is sixteen feet long—the boards are sixteen feet long.

387 Q. That is the lumber pile directly in front of your office. I want to know how far the lumber piles extend along the railroad?

A. Why, the full length of the property there.

Q. About what distance?

A. Well, it is at least 200 feet.

Q. And back in the rear, have you any lumber piles back there?
A. Yes, sir.
Q. How far does your property extend back?
A. Back to the Junction R. R.
Q. And you have lumber piles back there?
A. Yes, sir.
Q. And what area does your lumber yard cover?
A. About an acre.
Q. Were the lumber piles along the railroad that day of the same height as the one immediately in front of your office?
A. Some of them are higher; that is about the lowest.
Q. The others were of what height?
A. Anywhere from 6, 8, 10, 12, maybe 14 feet, some of them.
Q. Mr. Dubarry, look at the plan there to your right. Will you please point out your office.
(Witness indicates.)
Q. That is the office of George D. Dubarry & Co.?
A. Yes, sir.

388 Q. Now tell what doors and windows you have in front of this office?
A. A door here.

By Mr. MILLER:

Q. That is at the end towards 41st street?
A. Yes, sir. And a double window towards 41st street.
Q. On the day of the shooting that door was open?
A. Yes, sir.
Q. When you heard the shot, Mr. Dubarry, and looked out, where did you see this man?
A. I saw him about here.
Q. That is a little toward 41st street from the place where the bullet hole is?
A. Yes, sir. I first saw him near the point marked "bullet hole" on the plan going toward the upper end.
Q. How far did he go before he turned?
A. Not more than eight feet.
Q. Indicate on the plan about how far he went?
A. At the cross mark, marked "C" on the plan.
Q. Then where did he go?
A. He turned right there, kind of threw his hand up, and walked straight across there.
Q. Walked over toward Almond alley into the space between the 1st switch and second switch?
A. Yes, sir. Then he walked diagonally across this track [indicating point on map].

389 Q. He walked diagonally across the second switch to the point toward 40th street where the soldier met him?
A. Yes, sir.
Q. Where was the soldier—the soldier toward Fortieth street—when you first saw him?
A. The soldier was about as far away from this spot as Crowley was—that is, the spot where he dropped.

Q. In your judgment, how many feet were they apart?
A. Probably 150 feet apart when I first saw them, when I noticed the soldier coming up.
Q. Where did you see the other soldier?
A. Near the center of Almond alley and the foot of it.
Q. Did you see Lieutenant Drury at this time?
A. I did not pay much attention to him.
Q. When did you first see Lieutenant Drury?
A. I saw him there when the crowd gathered around.
Q. When you first saw the soldier, did you see him?
A. No, sir.
Q. Now, Mr. Dubarry, does that point (on the map) indicate the place where the bullet mark is?
A. Yes, sir.
Q. And did you point that out to the man at the time he made this plan—to the surveyor?
A. I don't know; there were different people there.
Q. The hole is still there?
390 A. Yes, sir.
Q. Do you think it is accurately marked here?
A. It looks to be; it may be drawn that way a little further than it ught to be.
Q. Now, Mr. Dubarry, when did you first see Lieutenant Drury after he shooting?
A. Well, now, I can't state that positively; he was there shortly after he soldier dropped.
Q. What was he doing when you first saw him?
A. He was working with Crowley.
Q. Doing what?
A. Kneeling down with him; I don't know what he was doing; I uppose he was trying to stop the blood.
Q. Were you asked to do anything?
A. I was asked to telephone for an ambulance.
Q. Did you?
A. I did.
Q. Did you succeed in getting an ambulance?
A. No, sir; they told me I would have to telephone to the city station.
Q. Were you asked again?
A. Yes, sir.
Q. Then what did you do?
A. I telephoned for a patrol.
Q. Were you able to get that?
l A. No, sir.
Q. Did you send anybody or did you go yourself to any other one?
A. I sent and went myself. I went up to the patrol box and had it ned.
Q. Did you open it yourself?
A. No, sir; I had it done.
Q. Well, did a wagon come?
A. Not for a long time.

Q. How long?
A. I should judge it was, well, 30 or 40 minutes; I can't tell.
Q. During all this time where was Crowley?
A. Lying right where he dropped.
Q. Was there any attention being given him?
A. There was a crowd around him; I was trying all the time to get an ambulance or a patrol wagon to take care of him.
Q. While the soldiers were taking care of him were you asked to bring any water?
A. No, sir.

Cross-examination by Mr. HAYMAKER:

Q. At the time you heard the shot fired you had your back in the direction of the opening between the lumber piles?
A. Yes, sir.
Q. At a distance of how many feet were you from the bullet mark?
392 A. I should judge it would be about 26 or 28 feet.
Q. And did you know where the shot—the sound—proceeded from? Did you know from which direction the sound of the shot came?
A. Yes, sir; I turned right around. It sounded like as if it came from the railroad tracks.
Q. You did not see Crowley at the time he was shot?
A. I jumped up and ran just when I heard the report of the gun.
Q. You were not looking at Crowley?
A. No, sir.
Q. So that you do not know the attitude of Crowley at the time the shot was fired?
A. No, sir.
Q. But when you turned you could see him plainly?
A. Yes, sir.
Q. The lumber pile there was low?
A. Yes, sir.
Q. You could see about one-half of the body above the lumber pile?
A. The shoulders and the arms.
Q. Was he above or below the opening at the time you first saw him?
A. Above the opening.
Q. How far did he appear to be from the opening?
393 A. Why, when I first saw him he appeared to be about 10 feet from the opening.
Q. What is the height of the other pile of lumber?
A. I couldn't tell; they have been changed since that time.
Q. When you ran out did you go out of the door at that side of the office?
A. There is only one door that leads out onto the street.
Q. Did you see the soldier before you went out of the office?
A. No, sir.
Q. So that at the time the shot was fired you did not know where the soldier was?
A. No, sir.
Q. And when you arrived at the scene of the shooting you saw one

soldier coming from the direction of 40th street and the other soldier from the foot of Almond alley?

A. Yes, sir.

Q. What was the soldier doing?

A. Just lowering his gun.

Q. How do you mean?

A. Taking it down that way [indicating]; from the position a man would have it in when he fired. I asked him what he had shot him for and he said for stealing copper.

Q. He did not deny that he had shot him?

A. No, sir.

Q. How far was the man that lowered the gun from young
394 Crowley when Crowley was shot? In feet as near as you can tell?

A. I should judge about 60 feet; it might be more or less.

Q. That bullet passed through what?

A. After going through Crowley it passed through 4" of hemlock.

Q. And then into what?

A. Then it went into a piece of beech.

Q. And was it ever cut out of that?

A. It passed through the beech.

Q. How thick a piece of beech?

A. 3 x 4.

Q. Where did it go then?

A. Then it went into another piece of 2 x 4 hemlock.

Q. Did it lodge in there?

A. No; it just made a dent through it.

Redirect examination by Mr. MILLER:

Q. You said in your cross-examination that Crowley was about 10 feet from the opening from the upper opening or the lower opening?

A. From the opening toward 41st street.

Q. You say he was about 10 feet from the opening toward 41st street?

A. Yes, sir.

Q. And how far from the opening toward 40th street?

A. Well, that would be about 6 feet.

395 FREDERICK BEERMAN called by the United States.

Direct examination by Mr. YOUNG:

Q. Mr. Beerman, where do you live?

A. 31 Grove street, Pittsburgh.

Q. What is your occupation?

A. Bookkeeper for Dubarry & Co.

Q. Mr. Dubarry is the gentleman who preceded you on the stand?

A. Yes, sir.

Q. Were you in the office of Dubarry & Co. on the day of the shooting?

A. Yes, sir.

Q. What were you doing?

A. I was working at the desk at the time.

Q. And where is your desk located in the office?

A. Located in the rear part on the other side of the partition.

Q. And what position were you in with respect to the railroad at the time the shot was fired?

A. I was facing up the railroad.

Q. Did you hear the shot that morning?

A. Yes, sir.

Q. About what time was it?

A. It was some time before 10 o'clock.

Q. Then when you heard the shot what did you observe?

A. I turned and looked out of the open door and I saw a man running along the lumber pile.

396 Q. Could you see him from where you were standing?

A. Yes, sir.

Q. Then what did you do?

A. I told Mr. Dubarry somebody had been shot. I then went out of the office, climbed up on the lumber pile, crossed it, and then the man turned and walked toward Almond alley, put down one hand to his leg and raised the other hand; then he turned toward the direction of 40th street and walked down to meet the soldier who was coming up the track; the soldier took him by the hand and the wounded man sank to the ground.

Q. In relation to the opening toward 40th street, where did you first see Crowley?

A. He was just about the center of that pile when I first saw him.

Q. Had he passed that opening?

A. Yes, sir.

Q. Which way was he facing when you first saw him?

A. Facing toward 41st street.

Q. After you first saw him, how far did he go until he turned?

A. Only a few steps. He took three or four steps across the tracks towards Almond alley.

Q. Then what did he do?

A. He threw up one hand on about a level with his shoulder and then turned and walked down the track toward Fortieth street.

Q. Then he met the soldier?

397 A. Yes, sir.

Q. Did they walk towards each other?

A. Yes, sir.

Q. How many soldiers did you see at that time?

A. Just at that instant I saw two.

Q. You say you saw this soldier that he met?

A. Yes, sir.

Q. Then where did you see the other soldier?

A. He was standing at the foot of Almond alley.

Q. In what position was he as to his gun?

A. He was just lowering his gun.

Q. Where did he go?

A. He came across the tracks toward the lumber pile. I don't know what he did after that.

Q. Did you see Lieutenant Drury?

A. Yes, sir.

Q Where?

A. I followed Crowley down the track, and Lieutenant Drury was crossing the tracks just then, coming from the direction of Fortieth street.

Q. What did Lieutenant Drury do?

A. He came to the man on the ground, opened his trousers and started to make efforts to stop the bleeding.

Q. Had you observed before that that the man was wounded?

398 A. Yes; I knew that as soon as I got to the top of the lumber pile, from the blood coming out of his shoe.

Q. Were you asked to do anything?

A. Yes; Lieutenant Drury asked me to telephone for an ambulance, which I turned to do. I went into the office and found Mr. Dubarry had already telephoned for an ambulance. Then I came out and told the lieutenant it was being done, then Mr. Dubarry came out and told me I had better 'phone again as he could not reach the parties. Then I went in and told the Central to give me the 43rd-street station in order to get the patrol down, and she said she would have to get connection with the main office downtown, and that was done. I then went out and told the lieutenant I had telephoned for the patrol wagon and then he asked me to telephone to Dr. McFarlane. He gave me his telephone number out in the East end; also his number down here in the city. I went in our office, called up the Doctor's residence, and the lady who answered the 'phone said he was out—had gone to the Arsenal Bank, she thought. I left word for her to try and get hold of the doctor and tell him the lieutenant wanted him at 40th street. Then I went out and told the lieutenant I had ordered the doctor.

Q. Did you notice what the lieutenant did to the wound?

A. He got a hold around the wound with his fingers.

Q. Did he tie it up?

399 A. Yes, but that was later. Somebody tied a knot in a handkerchief and he tied that around it. I had one of our men bring it a bucket of water right away.

Q. What were the soldiers doing at this time?

A. Keeping the crowd back.

Q. Did you indicate to Mr. Fairchilds, the surveyor, the bullet mark?

A. Yes, sir.

Q. Is it still there?

A. Yes, sir.

Q. The crosspiece is still there that was there the day of the shooting?

A. Yes, sir.

Q. On that day how high was that lumber pile?

A. Three feet.

Q. That is toward the office?

A. Yes, sir.

Q. How high was it on the railroad side?

A. About the same height. The railroad track is lower, making it 4 or 5 feet.

Q. You know the bullet hole is in the crosspiece toward Fortieth street; how far is that bullet hole from the end of that crosspiece, from the end toward the railroad?

A. Perhaps a foot or a little over.

Q. Were you present when the bullet was taken out of the NEXT crosspiece in the rear?

A. Yes, sir.
Q. How far was it from the end of that crosspiece?
A. About 3½ feet.
Q. At that point was there an opening through immediately in front of the office?
A. Yes, sir.
Q. How wide was that opening towards Fortieth street?
A. Perhaps about two feet wide.
Q. Was there an opening toward Fortieth street?
A. I don't remember; I don't think there was a very large opening.
Q. How far do your lumber piles extend up from this lumber pile toward 41st street?
A. Perhaps 100 feet or over.
Q. How high were they?
A. Different heights, some of them 10 feet, some perhaps 15.
Q. Then how far did the lumber piles extend down from this toward Fortieth Street?
A. 100 to 150 feet.
Q. And how high were they?
A. They were of various heights, some of them 15 to 18 feet.
Q. Were there any openings in them except in this lumber pile near the office?
401 A. I think there was one.
Q. Are there any lumber piles in the rear around the office?
A. Not around the office; the lumber is piled in the shape of a circle or semicircle.
Q. Mr. Dubarry, you are familiar with this plan, are you?
A. Yes, sir.
Q. This mark here is your office, is it.
A. Yes, sir.
Q. This mark here, marked "Bullet hole," is that the proper position for it as you pointed it out?
A. Why, no; it ought to be down this way further.
Q. Well, in relation to that bullet hole that is there now, where was Crowley when you first saw him, assuming that the bullet hole is indicated properly; had he passed it?
A. Yes, sir.
Q. About how far?
A. Just a few feet.
Q. Going toward 41st street?
A. Yes, sir.
Q. And in what direction was his face then?
A. Towards 41st street.
Q. About how far did he go until he turned?
A. Two or three steps.
Q. And then he turned and went in what direction?
A. Over toward Almond alley and crossed over the first and second tracks.
402 Q. Then what did he do?
A. He faced the soldier that was standing over here in the vicinity of this telegraph pole, put one hand down to his leg and raised

the other hand on a level with his shoulder; he then walked down between the second and third tracks toward 40th street, and met the soldier about 60 feet from where he turned.

Q. You were out on the ground here before they met?

A. Yes, sir.

Q. And you did not see Lieutenant Drury until after the soldier was lying on the ground?

A. Yes; shortly before.

Q. What was he doing?

A. Coming across this way from Fortieth street.

Cross-examination by Mr. HAYMAKER:

Q. How many windows are in your office on the side next to the Allegheny Valley Railroad?

A. Two.

Q. How many doors?

A. One.

Q. Were the windows open that day?

A. I don't remember; the door was open.

Q. How far is your office from where you saw Crowley first
403 after you heard the shot?

A. About 20 feet.

Q. What was the first thing that attracted your attention?

A. The sound of the shot.

Q. That was the first thing that you heard?

A. Yes, sir.

Q. You had heard no unusual noise before you heard the shot?

A. No, sir.

Q. And when you saw Crowley had he, assuming that he was travelling east, had he passed the opening between the lumber piles?

A. Yes, sir.

Q. Then, when you looked out after you heard the shot, you could see the upper part of his body?

A. Yes, sir.

Q. After the shot was fired was he below or above the opening?

A. He was above the lower opening.

By the COURT:

Q. As I understand you, he was between the openings.

A. Well, there was an opening above and below the pile—he was about the center of the pile.

By Mr. HAYMAKER:

Q. Between the openings?

A. Yes, sir.

404 Q. There is a mark here called "Bullet hole." Was there an opening at that point?

A. Yes, sir.

Q. Where is the other opening that you speak of?

A. Up here.

Q. How wide was that opening?

A. I don't remember; just barely wide enough for a man to pass through. I think I could get through.

Q. Is there any other opening than that one?
A. There is one up here.
Q. Just about the same width as the one you just described?
A. A little larger.
Q. How far were the two openings apart?
A. Just exactly 16 feet.
Q. The length of the boards?
A. Yes, sir.
Q. You say you saw the bullet hole in the lumber pile or crosspiece?
A. Yes, sir.
Q. And according to your judgment it is not properly indicated on the map?
A. No, sir.
Q. Where should it be marked or indicated on the map, in your judgment?

405 A. Well, the door of the office is right here and this lumber pile extends down this way further from the door than it should.
Q. Then, according to your judgment, the lumber pile ought to be shoved down about how much?
A. About 10 feet to make it right with the office.
Q. When you first saw Crowley did you see the soldier at the same time?
A. The one at the foot of Almond alley?
Q. While you were looking from the office.
A. Yes, sir.
Q. What was he doing?
A. He had his gun in his hand; he was just leaving it down from his shoulder.
Q. You mean just as though he was shooting, or in the act of firing off the piece?
A. Yes, sir; what he would do if he had shot.
Q. You did not see the other soldier until after you went out of the office?
A. No, sir.
Q. Did the soldier at the foot of Almond alley come over to where Crowley was?
A. Yes, sir; he crossed in that direction.
Q. And when you went out did you see Lieutenant Drury?
A. Yes, sir.

Q. How far was Lieutenant Drury from the soldier that went 406 to the assistance of Crowley first.
A. Why, when I saw Lieutenant Drury first he was crossing the tracks right in front of Bonner's machine shop.
Q. How many tracks had he crossed when you saw him first?
A. The first two.
Q. How far was he from the soldier that first went to Crowley's assistance?
A. About 10 or 15 feet.
Q. Where were you when you first saw Drury?
A. I was walking down the railroad track a little distance back of Crowley.

Q. When you first saw Drury had the soldier and the wounded man come together?
A. Yes, sir.
Q. You first saw Drury when the wounded man was lying on the ground?
A. Yes, sir.
Q. That was after the soldier got to him?
A. Yes, sir.
Q. And where was Drury then?
A. Coming toward them at that time.
Q. Rapidly or slowly?
A. Just a usual walk.
Q. About how many feet from them?
A. I couldn't say; he was very close to them at that time.
407 Q. As soon as you heard the shot fired you went out?
A. Yes, sir.
Q. Did you walk rapidly or slowly to the railroad track?
A. Rapidly.
Q. When you arrived at the railroad track had the soldier and the wounded man met?
A. No. They were walking toward each other.
Q. How far apart were they when you arrived at the railroad track?
A. About 60 feet.
Q. And after they met you saw Drury?
A. Yes, sir.
Q. How long do you think it was from the time you heard the shot fired until Lieutenant Drury was to the wounded man?
A. Oh, just a few minutes, I would say.

FLORENCE WYLIE called by the United States.

Direct examination by Mr. YOUNG:

Q. Where do you live?
A. 904 Washington ave.
Q. Have you any official connection with the West Penn Hospital?
A. I did have; not at present.
Q. Did you in September, 1903?
A. Yes.
08 Q. September 10th, 1903.
A. Yes, sir.
Q. What was your position there?
A. Head nurse in the general surgical ward.
Q. Do you recollect when William Crowley was brought there?
A. Yes, sir.
Q. You may state whether his clothing was brought to you after he d been taken to the hospital?
A. They were brought into my office.
Q. What was your duty as to that?
A. It was a nurse's duty to go through the pockets of a patient, list m, and put them in a bag.
Q. Did you search his clothing?
A. Yes, sir.

Q. What did you find?
A. Money.
Q. How much money?
A. $3.50.
Q. In what shape?
A. Three one-dollar bills and one fifty-cent piece.
Q. And was that listed then on the books of the hospital?
A. It was, as far as I can recollect.
Q. And the money turned over to the office?
A. Yes, sir.
No cross-examination.

409 LEWIS BROWN, called by the United States.

Direct examination by Mr. YOUNG:

Q. Where do you live, Mr. Brown?
A. West Penn Hospital.
Q. What is your business?
A. I am employed in the operating room.
Q. Were you such September 10, 1903?
A. Yes, sir.
Q. Do you recollect when William Crowley was brought there?
A. Yes, sir.
Q. Was he taken to your department?
A. Yes, sir.
Q. Was his clothing removed?
A. Yes, sir.
Q. Did you help remove his clothing?
A. Yes, sir; I saw it removed?
Q. Did you see it taken to Miss Wylie's office?
A. Yes, sir.
Q. Was it turned over to her?
A. Yes, sir.

WILLIAM MOORE, called by the United States.

Direct examination by Mr. MILLER:

Q. Where do you live, Mr. Moore?
410 A. 101 Fortieth street.
Q. Where do you work?
A. Preston Steel Works?
Q. Do you remember September 10th, the day of this accident?
A. Yes, sir.
Q. Do you know William Crowley?
A. Yes, sir.
Q. Know him well?
A. Yes, sir.
Q. Had you ever worked with him?
A. Yes, sir.
Q. On the morning of September 10th, did you see Crowley?
A. Yes, sir.
Q. Where did you see him?
A. Standing on the end of the arsenal wall.

Q. Which end?
A. The lower end, near the railroad; right near 40th street.
Q. Where were you at the time?
A. Standing between 41st street and the plaster works.
Q. After you saw him there, where did you go?
A. Foot of 41st street, to the river.
Q. Did you hear a shot afterwards?
A. Yes, sir.
Q. How long after you saw him on the wall?
A. About one-half hour.
411 Q. What did you do after you heard the shot?
A. I came back up as soon as I heard the shot. Crowley was laying there.
Q. That was about one-half hour after you saw him on the wall?
A. Yes, sir.

Cross-examination by Mr. HAYMAKER:

Q. You were well acquainted with Crowley?
A. Yes, sir.
Q. And with Swartz?
A. I knew him to see him.
Q. And Kenna?
A. I was acquainted with him.
Q. Had you been with them before?
A. No, sir.
Q. Where were you going that morning?
A. Down to the river.
Q. What were you going there for?
A. To see the Pittsburg sand boat getting raised.
Q. At that time what were you working at?
A. The rolls at the Preston Steel Works.
Q. Why were you not working that day?
A. I was on night turn that week.
Q. How old are you?
A. 28 years old.
412 Q. When you saw Crowley first he was standing where?
A. About 4 foot or 5 foot from the end of the wall.
Q. Standing on 40th street?
A. Yes, sir.
Q. Well, what was he doing there?
A. I couldn't tell you.
Q. Were you walking at the time you saw him?
A. Yes; I stood there about a second and then went on down towards the river.
Q. He was standing there on Fortieth street?
A. Yes, sir.
Q. All the time you saw him he was on Fortieth street?
A. He was on the wall when I saw him?
Q. On the wall? I thought you said on the street.
A. He was on the wall at Fortieth street, at the foot of Fortieth street.
Q. All the time?
A. Yes, sir.

Q. What was he doing?
A. I couldn't say.
Q. Just standing there?
A. He was standing on top of the wall when I passed.
Q. Did you say anything to him?
A. No, sir.
Q. Did he say anything to you?
413 A. No, sir.
Q. That is a very public place there?
A. It is a public road where I went down.
Q. There are a great many people passing back and forth, and residences all around there?
A. Yes, sir.

THOMAS S. AILES called by the United States.

Direct examination by Mr. MILLER:

Q. Where do you live?
A. 94 Freeland street, 38th Ward, Pittsburgh.
Q. On September 10th, 1903, what was your occupation?
A. Collecting for the Household Credit & Auction Company.
Q. What is there business?
A. Furniture store.
Q. Where?
A. 815 Penn avenue.
Q. What was your route on that morning?
A. I would go out Penn avenue to 34th street, and out Butler, then down 39th street and around back of the arsenal.
Q. You went down 39th street that day, did you?
A. Yes, sir.
Q. And up along the Allegheny Valley R. R. tracks?
A. Yes, sir.
414 Q. What time in the morning was that?
A. Between 9 and 10 o'clock.
Q. Did you see anybody on the railroad as you went up?
A. Well, I passed several people coming up, and near the corner of Fortieth and the railroad I noticed four men and a bundle of tin—what I thought was tin—lying on the ground.
Q. Where were they?
A. They were standing near the arsenal wall, I should judge, 10 feet from 40th street.
Q. What were they doing?
A. Talking when I got there.
Q. Did you observe them particularly?
A. When I got up to them they stopped talking; raised up and looked at me, and I looked at them.
Q. What happened next?
A. The next thing I knew I was coming down 43rd street, and a bunch of people were standing at the corner and some were running down the railroad to where a crowd had collected.
Q. How long was that after you saw the boys at the corner?
A. About 20 minutes.

Q. Did you go back to where the crowd had gathered?
A. I did.
Q. Did you get in front and see what the trouble was?
A. Yes; I looked at the fellow on the ground and then stepped
415 out to one side and said to the soldier, "Why, I saw that fellow not more than 20 minutes ago beside the arsenal wall." He asked me who I was, and I gave him my card.
Q. You recognized the boy who was wounded as one of the boys you saw at the arsenal wall?
A. Yes, sir.
Q. And you handed your card to the soldier at that time?
A. Yes, sir.

Cross-examination by Mr. HAYMAKER:

Q. You were walking which way when you saw the boys?
A. Toward 40th street from 39th.
Q. Were you walking fast?
A. Just a moderate walk.
Q. How close were you to them when you first noticed them?
A. 20 feet.
Q. You walked past and didn't see them again until you saw the one on the ground wounded?
A. I didn't see them again until I saw the one on the ground wounded.

SAMUEL T. RIDDLE called by the United States.

Direct examination by Mr. MILLER:

Q. Where do you live?
A. 101 40th street?
416 Q. How far is that from the Allegheny Valley R. R.?
A. About 100 feet or 110 feet.
Q. And what is on the opposite side of the street from you?
A. The arsenal buildings and wall?
Q. You remember the morning of September 10, 1903, when this boy was shot, do you?
A. Yes, sir.
Q. Prior to the time of the shooting where were you?
A. Why, I went across over the railroad tracks to the planing mill.
Q. Did you see anything then?
A. Not going over.
Q. See anything coming back?
A. Yes, sir.
Q. What did you see?
A. I saw William Crowley standing at the corner of the arsenal wall.
Q. You knew William Crowley?
A. Yes, sir.
Q. How long had you known him?
A. 4 or 5 years.
Q. Then you came back and went to your home again?
A. Yes, sir.
Q. When did you next see Crowley that morning?
A. About a half hour after that.

417 Q. Where?

A. He was walking up street with two other men. Each of them was carrying a bundle of copper.

Q. Where were they carrying it to?

A. They carried it up to the corner of Fortieth and Willow street and threw it on a wagon there.

Q. Did you know the other men?

A. No, sir.

Q. Then what did you see?

A. One of the men handed some money out of the wagon to Crowley—it looked like money. It looked as though he handed down three bills, then he reached his hand down again—I couldn't tell what that was.

Q. Did you see him again that day?

A. Not until after he was shot.

Cross-examination by Mr. HAYMAKER:

Q. What time in the day was this that you first saw Crowley?

A. Between half past eight and nine o'clock.

Q. What day in the week?

A. Thursday.

Q. And what time did you next see him?

A. It was after nine o'clock, sometime.

Q. One-half hour or so after that?

A. Yes, sir.

418 Q. What time was it when you saw him carry some copper up toward the wagon?

A. Half past nine; somewhere around that.

Q. Did you know the men at the wagon?

A. No, sir.

Q. Did you ever see them before?

A. I don't remember.

Q. Was there any name on the wagon?

A. I couldn't say. It was up at the corner of Willow street.

Q. How old were the men?

A. Well, one seemed pretty old—he had whiskers; the other was a younger looking man.

Q. And the two strange men and Crowley were walking together?

A. No, sir; the older man was first, then the younger one, and Crowley came last. The first man was short, too.

Q. What did the first man have?

A. He had a bundle of scrap copper.

Q. What do you mean by scrap copper?

A. Well, it was all torn up.

Q. How was he carrying it?

A. He had it on his shoulder.

Q. And the second man had the same thing on his shoulder?

A. Yes, sir.

Q. And Crowley the same?

A. Yes, sir.

419 Q. Did you see the wagon?

A. Yes, sir.

Q. Was it standing at the corner?
A. Yes, sir.
Q. Were you passing them or going in the same direction with them when they had the copper?
A. I was standing at the gate. They walked passed me in the street.
Q. Where did they go after they passed you?
A. Up to the wagon.
Q. How far was the wagon?
A. About the same distance from me as it was to the railroad; about 110 or 120 feet.
Q. Did you watch them all the time?
A. I looked at them going up and saw them throw it on the wagon.
Q. What were you doing there?
A. That is where I live.
Q. You were standing at your gate?
A. Yes, sir.
Q. How long was Crowley at the wagon?
A. Only a short time. It was done as quick as it is possible to act—transact a little piece of business.
Q. Did you see them hand Crowley some money?
A. Yes, sir.
420 Q. But you don't know how much or what kind of money?
A. There were three bills; I could see that from my house.
Q. Where was Crowley when the money was paid?
A. He was alongside the wagon.
Q. Was the wagon between you and Crowley when it was paid?
A. No; Crowley was beside the wagon, and when he was paid he walked around the end of the wagon onto the sidewalk.
Q. Well, was Crowley between you and the wagon?
A. No, sir; he was standing alongside the wagon; he was on the street at the side of the wagon.
Q. The wagon was not between Crowley and you?
A. No, sir.
Q. Nor was Crowley between you and the wagon?
A. No, sir.
Q. Was he standing at the end of the wagon?
A. He was standing at the side of the wagon.
Q. Which way was the wagon standing?
A. The horse was facing me.
Q. Was the wagon standing up and down 40th street or across 40th street?
A. Up and down.
Q. And you were below on 40th street?
A. Yes, sir.
Q. When Crowley received the money he was standing alongside the wagon; after he got the money he turned around the end
421 of the wagon toward the sidewalk?
A. Yes, sir. He walked around the end of the wagon toward the sidewalk.

Mrs. ADA CLAYPOLE called by the United States.

Direct examination by Mr. MILLER:

Q. Is your name Mrs. Claypole?
A. Yes, sir.
Q. The man who just left the stand is your father—that is, Mr. Riffle?
A. Yes, sir.
Q. You live with him?
A. Yes, sir.
Q. Where?
A. At 101, 40th street.
Q. Were you living there on the 10th day of September, 1903?
A. Yes, sir.
Q. And how long before that?
A. About a year before that.
Q. Did you know William Crowley, the boy who was shot?
A. Yes, sir.
Q. For how long.
A. I knew him since he was a child, since he was about two years old.
Q. You have known him all his life?
A. Yes, sir.
422 Q. Do you remember seeing Crowley at that time near the arsenal property?
A. Not on the day of the shooting.
Q. Well, how long before the shooting?
A. Two days before.
Q. Where?
A. On the arsenal wall, right across the street opposite our house.
Q. What was he doing?
A. He was standing on the wall digging at the roof.
Q. How long was that before the shooting?
A. Two days.
Q. Was anybody else with him at that time?
A. No, sir.
Q. Was anybody else with you at the time you saw him?
A. Mrs. Cooper. She was standing at our gate; her and I were in conversation.
Q. Did you talk about it?
A. Yes, sir; she made a remark about it.

Cross-examination by Mr. HAYMAKER:

Q. What time in the day was this?
A. Between nine and ten o'clock.
Q. How far from you was he at the time?
423 A. Just opposite our house; directly across.
Q. Does the wall of the arsenal touch the building?
A. Yes, sir.
Q. So that you can step onto the building from the wall?
A. Yes, sir.
Q. What was he digging with?
A. I couldn't say what he had in his hand.
Q. How long did you watch him?

A. Only a few moments.
Q. Then you went away?
A. Yes; I went into the house.
Q. Was it a common thing to see boys on the arsenal wall?
A. Yes, sir; they used to play on the wall.
Q. In the grounds, too?
A. I couldn't say anything about the grounds. I seen them around on the walls, running around on the walls; sometimes on the Government building.
Q. They would jump on the Government buildings?
A. Only on the shed; they would sit on there.
Q. Was Crowley playing this morning that you saw him?
A. I don't think so; he was digging at the roof.

424 Mrs. EMMA COOPER, called by the United States, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where did you live in September, 1903?
A. 113 Fortieth street.
Q. Do you know the woman who preceded you on the stand—Mrs. Claypole?
A. Yes, sir.
Q. Do you remember being there at her house sometime in September?
A. Yes, sir.
Q. Was it before or after the shooting of Crowley?
A. It wasn't that day at all that I was there. It was two days before the shooting.
Q. What did you see, if anything, at that time?
A. At the time I was standing with her I saw the young man on the arsenal wall.
Q. Who called your attention to it?
A. No one; I called Mrs. Claypole's attention.
Q. What was he doing?
A. Why, he was digging at the roof.
Q. Did you know him?
A. Not at that time.
Q. Did she tell you who it was?
425 A. Mrs. Claypole told me it was William Crowley.

Cross-examination by Mr. HAYMAKER:

Q. Where were you living at that time?
A. 113 Fortieth street.
Q. Where were you at the time you saw Crowley on the wall?
A. Down at Mrs. Claypole's gate; talking to her.
Q. Was he at any time on the building?
A. Not that I seen.
Q. The building stands right close to the wall?
A. Yes, sir.
Q. What was he doing?
A. He was digging at the roof.
Q. With what.

A. With something he had in his hand; I couldn't say what.
Q. What did it look like?
A. I wasn't close enough to see what it looked like.
Q. How could you tell he was digging? Might he not have been pounding?
A. Well, he might have been pounding, but I thought he was digging.
Q. Wasn't he just striking the roof?

A. I thought he was digging; it looked that way. He might
426 have been striking the roof.

Q. You don't know that he was actually digging?
A. It looked as if he was.
Q. Well, you don't know what kind of an instrument he was using?
A. No, sir.
Q. All you know is he was striking the roof; you don't know whether he was pounding or digging?
A. I don't know.
Q. It was in full view of anybody around there?
A. I don't know. Anybody else there could have seen had they been looking.
Q. Well, it is a very public place?
A. Supposed to be.
Q. He could be seen from the arsenal grounds?
A. Well, I suppose if they were close enough they could see him.
Q. And anybody on Fortieth street could see him?
A. Yes, sir.
Q. Anybody living along the row where you were could see him?

A. Yes, sir.

427 By Mr. YOUNG. I desire to offer in evidence Exhibits Nos. 1 and 2, that have been testified to;

Also the certified copy of the commission of Second Lieutenant Ralph W. Drury, and also the efficiency record of Ralph W. Drury.

By Mr. HAYMAKER. I object to the efficiency record. How is that material here?

The COURT. I really will not exclude any evidence that you say you regard as material to the Government's case. Whatever you regard as material to the case of these petitioners, these relators, or the Government, which I suppose is a party, here, I will receive it. Let the efficiency record be received.

By Mr. YOUNG. I offer in evidence certified copy of the muster roll, showing that John Dowd was a private in the Ninth Regiment on the 10th of September, 1903.

By Mr. HAYMAKER. Objected to.

428 The COURT. These documents are received under the objection of the counsel for the Commonwealth of Pennsylvania.

By Mr. YOUNG. I offer in evidence certified copy of the order of the War Department showing that the Allegheny Arsenal was a subpost.

The next is a certified copy of the Army Regulations showing the Army Regulations in force on September 1st, 1901;

Also certificate of the Secretary of War in that book, showing it was published by the direction of the President;

Also calling particular attention to—

Page 1	Article 1	Section 1
" 33	" 29	" 218
" 54	" 41	" 369
	Article 45	Section 425
	" 45	" 433
	" 47	" 518
	" 59	" 739
	" 59	" 740
	" 59	" 744
	" 59	" 764
	" 59	" 766
	" 59	" 771

We also offer in evidence certified copy of the Manual of Guard
429 Duty, marked "Exhibit Y." In the Manual of Guard Duty I offer the certificate in the first part of it;

Also

Page 1	Section 3
" 3	" 11
" 10	" 47
" 11	" 54
" 11	" 56
" 14	" 69
" 17	" 94
" 22	" 120
" 26	" 149
" 26	" 150
" 33	" 188
" 36	" 207
" 37	" 215
" 39	" 223
" 46	" 227
" 49	" 282
" 52	" 298

I offer in evidence the record of the finding of the court-martial, marked "Exhibit Z."

By Mr. HAYMAKER. Objected to as incompetent and irrelevant.

The COURT. I have already said, and I think I will follow my intimation, that whatever the Government thinks—the relators—I suppose the United States is really a party here at the relation of these petitioners—whatever you, as representing the relators and the United States, think is material to this case I am disposed to admit.

430 By Mr. YOUNG. We think it is material.

The Government rests.

431 MATTIE TERWILLERGER, called by the respondents, being duly sworn, testified as follows:

Direct examination by Mr. MARRON:

Q. Where do you live?

A. 4011 Willow street.

Q. Have lived there how long?

A. Last five years.

Q. Were you living there on the tenth of September last?
A. Yes, sir.
Q. You remember hearing of this homicide, do you?
A. Yes, sir.
Q. Do you know Lieutenant Drury?
A. Yes, sir.
Q. Did you see him that morning?
A. Yes, sir.
Q. About what time?
A. About ten o'clock. It was exactly ten minutes after ten when I started to sweep in the front room. I had swept that room and was sweeping the pavement when Lieut. Drury and the soldiers came down the alley.
Q. Have you seen the soldiers since?
A. Yes, sir; I have seen one of them?
432 Q. Do you know Dowd?
A. I didn't know him before I met him at the court-martial.
By Mr. MARRON. Stand up, Mr. Dowd.
(Dowd arises and witness answers:)
A. I know him now. I couldn't say that was the soldier I saw coming down the alley.
Q. You know Drury, though?
A. Yes, sir.
Q. Did you see them stop at the corner of Willow street and Almond alley?
A. Yes, sir; they stopped and Drury commanded the men to go down the alley and he would go around 40th street; he then started to run down 40th street.
Q. Did you go along?
A. Yes, sir; I ran just back of him.
Q. Could you keep up with him?
A. Not all the time. When we got to 40th street he got a little ahead of me. I caught up to him once on 40th street and then he got a little ahead of me again, but we were both at 40th street and the railroad almost at the same time.
Q. Before reaching the corner did you see any boys or young men?
A. Yes, sir; there were people all around of us, running back of us, and three young men came running around the corner in front and
433 one ran over the ash pile, and the others ran up towards 41st street.
Q. You mean along the railroad?
A. Yes, sir.
Q. Did you see these three boys start to run?
A. No, sir; but they hadn't gotten very much of a start when I first saw them.
Q. Which way were they running?
A. One was running over the tracks up towards the ash pile and the others in the direction of 41st street.
Q. Where was Drury at this time?
A. Drury had just gotten to the corner of 40th and the railroad.
Q. Are you positive of that?
A. Yes, sir.

Q. Where was Crowley?

A. Crowley was running along the lumber pile. I heard Mr. Dowd command him to halt.

Q. Did he halt?

A. He turned around and through up his hands and said "Don't shoot, fellow, I will give up," and just then Lieut. Drury said "Fire," and the soldier shot.

Q. Where was Drury at that time?

A. At the corner of 40th and the railroad, opposite the brass foundry.

Q. On the property adjoining the railroad?

A. Well, I guess adjoining the railroad. It either belongs to
434 the railroad or the brass foundry.

Q. Was he in view of both the soldier and Crowley?

A. Yes, sir.

Q. Where was the soldier?

A. In the middle of the tracks between Almond alley and 40th streets.

Q. As nearly as you can estimate, what distance was there between Crowley and the soldiers?

A. Well, it was about one-half a square.

Q. That is, between Crowley and the soldier that shot him?

A. Well, no; not quite one-half square. Crowley was at the foot of Almond alley and the soldier was between Almond alley and 40th street.

Q. Was Crowley at the foot of Almond alley on the railroad?

A. He was beside the lumber pile on the other side of the railroad.

Q. The lumber pile is on the river side of the railroad track?

A. Yes, sir.

Q. There are a number of tracks there?

A. Yes, sir.

Q. When the soldier fired what followed?

A. Crowley grabbed the wound and he kind of limped and walked toward the soldier and said, "Oh, you shot me."

Q. You were at the foot of 40th and the railroad?

A. Yes, sir.

435 Q. Standing in full view of it, were you?

A. Yes, sir.

Q. And what did you do after the young man turned toward the soldier?

A. I turned when Crowley came down toward the soldier and walked towards Mrs. Long, who was at Almond alley and the railroad.

Q. Mrs. Long was at Almond alley and the railroad?

A. Yes, sir.

Q. Does she live on Almond alley?

A. Yes, sir.

Q. She had come out of Almond alley at that time, had she?

A. Yes, sir.

Q. Before you reached that corner, had you heard "Halt!" cried by anyone?

A. No, sir.

Q. Did you see Drury draw a revolver from his pocket?

A. No, sir.

Q. How close were you to him when he reached the corner of 40th and the railroad?

A. Right up to him.

Q. Was he on the street or sidewalk?

A. On the sidewalk.

Q. Was he on the street at any time?

A. Not that I noticed.

Q. Was this a quick step or a run?

436 A. He ran.

Q. You say you were doing your utmost to keep up to him?

A. Yes, sir; I ran as fast as I could. I had a broom in my hand.

Q. Now, when Drury said "Fire!" was there a shot fired?

A. Yes, sir.

Q. By whom?

A. The soldier that was standing there.

Q. You mean Dowd?

A. Yes, sir.

Q. Do you recognize him in the room?

A. I recognize him now, but I didn't at the court-martial.

Q. Well, is he the man who stood up a while ago?

A. Yes, sir.

Q. And was the firing done after or before the order to fire?

A. After.

Cross-examination by Mr. MILLER:

Q. How long have you known Crowley?

A. I went to school with him when he was eight years old.

Q. You have known him since he was a child about eight years old?

A. Yes, sir; but I didn't see very much of him for the last five years.

Q. You told this same story before the court-martial?

437 A. Yes, sir.

Q. And the same story before the coroner?

A. Yes, sir.

Q. Have you been here every day?

A. Here? No, sir. This is my first day.

Q. You said, I think, that the soldier turned around and said, "I will give up, fellow," when the shot was fired—Crowley said that?

A. Yes, sir.

Q. He turned around, faced Dowd and said, "I will give up, fellow," then Drury, who was standing beside you, gave the command to fire, and he fired?

A. Yes, sir.

Q. Then you would say he was shot in the front?

A. Yes, sir.

Q. Now, you did not hear the testimony of the three doctors?

A. No, sir.

Q. Well, the testimony of the three doctors was that the ball entered from the rear and came out in front,

(Objected to. Objection sustained.)

By the COURT:

Q. How old are you?

438 A. Twenty-one years old.

Here court adjourned until 9.30 a. m. to-morrow (Thursday, February 25, 1904).

439 Thursday morning. Drury-Dowd case.

Thursday, February 25, 1904, the hearing of testimony in this case resumed at 9.30 a. m.

F. B. VINCENT, a witness, called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. HAYMAKER:

Q. What was your business on the 10th of last September.
A. Police officer.
Q. How long have you been a police officer.
A. Near ten years now.
Q. Are you on the force now?
A. Yes, sir.
Q. Were you acquainted with Lieut. Drury on the 10th of September?
A. By sight; yes, sir.
Q. Were you acquainted with William Crowley, deceased?
A. Yes, sir; I have known him since he was an infant.
Q. Were you acquainted with Private Dowd?
A. No, sir.
Q. Do you remember this occasion out there on the 10th of September?
A. Yes; I remember of finding young Crowley on the railroad track.

440 Q. Where were you when you first heard of the trouble?

A. Asleep in station house No. 5, 43d street.

Q. Just state what you did and what you saw.

A. I think near ten o'clock, about ten o'clock on that day, I was called by Sergeant Thompson and ordered to proceed to the Valley Railroad near 40th street at once, that a soldier had shot a man. In company with Officer Cooke, we proceeded down there and we found young Crowley lying on the Valley Railroad tracks, or, I believe, rather between two tracks—the railroad property, at least—with Lieut. Drury and another soldier standing in the crowd. I proceeded to make some inquiry about it as soon as I arrived on the scene; and the first person I fell on was the boy's grandfather; so I asked him if the soldier standing there was the one that shot him, and he informed me——

(Objected to.)

Q. Never mind that. How close was the soldier standing to the grandfather?

A. Standing as close as I am to this lady [indicating the reporter].

Q. Close enough to hear that conversation?

441 A. If he had been listening, he could have heard it; I didn't speak in an undertone.

Q. Which officer was it that was present?

A. The lieutenant and a stout, heavy-set officer; I didn't know his name.

Q. Was it a stout, heavy-set officer or a private?
A. Well, I suppose they would call him a private.
Q. Would you know him if you could see him?
A. I would know the man that was standing there.
Q. Well, look around in the court room and see if you see him?
A. No, sir; he isn't in this room.
Q. How many privates were there?
A. Just the one.
Q. And then how many officers?
A. The lieutenant.
Q. Just the lieutenant?
A. Yes, sir; at least that was all I saw.
Q. Well, was your conversation with the lieutenant or with the other party?
A. With the grandfather first, and then the lieutenant.
Q. And then with the lieutenant?
A. Yes, sir.
Q. Well, did you have a conversation with the lieutenant?
A. Yes; I asked him——
442 Q. Just state what he said to you.
A. I asked him where the soldier was that had shot the boy.
Q. Well, go on.
A. He answered me by saying he knew nothing at all about it. We then proceeded, or I did, to put the boy in No. 3 patrol wagon to get him away from there; the patrol wagon arrived and the officer, the strangers, and I put the boy in the wagon and started the wagon up towards 43d street; I and Officer Cooke and the lieutenant of the arsenal and this private starts up 40th street. We came to a side entrance on 40th street, and I again asked the officer, or the lieutenant, there at the gate where I could find the soldier that shot young Crowley. He then answered me it was none of my business where he was. By this time he had sent the private in some other direction, I don't know where; he unlocked the side gate and I stepped inside of the arsenal—not off the walk, though—expecting he would lock the gate again; and he asked me where I was going. I told him I was going to locate the soldier that shot the boy. He immediately warned me to not enter that arsenal on peril of my life. And I then demanded that he turn the soldier over to me, and he informed me to attend to my own business and he
443 would attend to his, and to get out of there, if I valued my life.
Q. Then what did you do? Did you go out, in obedience to the officer?
A. I went out and returned to the station house again, and there received instructions to go to the arsenal and make demand for the private.
Q. Did you go there a second time and make a demand?
A. Yes, sir; I got as far as the gate, and they wouldn't allow me any further.
Q. Did you tell them what your business was that time?
A. Yes; I demanded the prisoner from the man at the gate.
Q. Did you have a uniform on?
A. Yes, sir; on both occasions.
Q. And you were refused admission?
A. Yes, sir.

Q. When you had the conversation with the grandfather outside, I wish you would state whether Lieut. Drury was near enough to hear any conversation between you and the grandfather?

A. I couldn't testify how close he was standing, because there was such a crowd rushing in on the boy; and at the same time I was trying to keep the crowd back from the boy and finding out which man had shot the boy; therefore I couldn't testify just how close he was standing.

444 Q. When you arrived there, what was Lieut. Drury doing?

A. He was standing alongside of young Crowley.

Q. What was he doing?

A. He wasn't doing anything when I got there. Crowley was lying there, and he was standing beside him.

Q. Did your district or beat cover the arsenal property, or around the arsenal?

A. Yes; our district did. When we are sleeping there, we are supposed to take in the whole district.

Q. Have you any idea with reference to the patrolling of the arsenal grounds by the soldiers before this shooting?

A. Nothing further than seeing them walking to and fro in the arsenal; I don't know anything about their regulations.

Q. You don't know anything about their time of patrolling?

A. No, sir.

Q. Do you know anything about the discipline that was maintained inside of the arsenal grounds?

A. To a degree; during the carnival I know a little about it—that's all.

Q. Was that after this shooting?

A. Yes, sir.

Q. Did you know anything before the shooting?

A. No, sir; I never was on duty in the arsenal.

445 Q. Do you know anything about the conduct of the soldiers before the shooting?

A. Inside of the arsenal?

Q. Yes.

A. No, sir; I don't know anything about the soldiers inside of the arsenal.

Q. Do you know anything about their conduct outside of the arsenal?

A. Yes, sir.

(Objected to as incompetent. Objection sustained.)

Mr. MILLER:

Q. Was the wound bandaged at the time you got there?

A. No, sir.

Q. Did you notice whether it was or not?

A. I noticed the hole in the boy's leg.

Q. Did you notice that a handkerchief was tied around at the time?

A. No, sir; a bunch of them bound it up after I arrived there.

By the COURT:

Q. You spoke of being sent from a station, I think you called it.

446 A. The station house; yes, sir.

Q. Where is that station house?

A. 43d and Lawrence street; No. 5 police station.

Q. How far is that from the lower end of 40th street?
A. About seven squares, as near as I can estimate it.

EDWARD COOKE, called on behalf of the respondent, sworn, testified as follows:

Direct examination by Mr. HAYMAKER:

Q. Are you a police officer now?
A. Yes, sir.
Q. How long have you been an officer of that kind?
A. Going on three years; a little over three years.
Q. When, on the 10th of September, did you first hear of the trouble at the arsenal?
A. At the station house; we were sleeping there and were 'wakened.
Q. What time did you get the word?
A. Well, that was about between nine and ten o'clock; somewhere along there.
Q. And what did you do?

447 A. I went down—me and Officer Vincent went down 40th street, clear to the railroad.

Q. What did you find there?
A. We found a boy lying there, right outside the track.
Q. I wish you would say whether you saw the wound at that time.
A. I could see the hole in his leg.
Q. State whether or not it was bound up at that time.
A. Well, no; it wasn't. The lieutenant was down on his knees when I was there.
Q. But was the wound bound up at that time when you arrrived?
A. No, sir; he was binding it up at the time I was there, because I took notice to the lieutenant having his hands full of blood.
Q. Could you see the wound?
A. Yes, sir.
Q. I wish you would state whether you had a talk with Lieut. Drury at that time.
A. No; only what Officer Vincent had. I followed Officer Vincent.
Q. What conversation did you hear between the other officer and Lieut. Drury?

448 A. He asked Lieut. Drury where the soldier was that shot the boy, and he said it wasn't none of our business, and started to walk away; but we followed him up to 40th street, and we went to the gate—a side gate—and he ordered us out of the gate; he wouldn't allow us inside.

Q. What did you tell him you wanted inside the barracks for?
A. We wanted the soldier for shooting the boy.
Q. You wanted to arrest him, as officers of the city?
A. Yes, sir.
Q. And what did he say to you?
A. He said we couldn't have him.
Q. Give any reasons for it?
A. He didn't say anything about reasons.
Q. Did you go there later on again?
A. We went twice; we went the second time and demanded him again,

and he said no, we couldn't have him. Then we went up to the other gate and they wouldn't let us in the second gate at all.

Q. At what time did you go there the second time?

A. About an hour or so later.

Q. State whether you were sent there by your superior officer.

A. Yes, sir; by the sergeant.

Q. Who did you meet there the second time?

449 A. Private Dowd was at the gate, but we didn't know it was him that was the man at the time.

Q. Was Dowd there when you got there?

A. He was there on duty.

Q. What did he say?

A. He refused to admit us.

Q. What did you say when you got there?

A. Officer Vincent said, "We demand the prisoner in the name of the law;" and he said, "You can't have him."

Q. Then what did you do?

A. Well, we had to walk away. We stood around there a little while and walked away, and went back to the station house and made our report.

Q. Was that all the conversation that took place there?

A. Why, Officer Vincent was doing all the talking.

Q. I mean, was that all that was said between Officer Vincent and Private Dowd?

A. Yes. Down below he said if we went inside it would be at the peril of our lives.

Q. Who said that?

A. Lieutenant Drury.

Q. Did you have your uniform on on both occasions?

A. Yes, sir.

No cross-examination.

450 Mrs. HANNAH LONG, called by respondent, sworn.

Direct examination by Mr. HAYMAKER:

Q. Where do you live?

A. I live at 97 Almond alley.

Q. Were you living there on the 10th of September last?

A. Yes, sir.

Q. Are you a married woman?

A. Yes, sir.

Q. Living there with your husband and family?

A. Yes, sir.

Q. How far are you from the railroad track?

A. I am the sixth house from the railroad tracks—the sixth house from the corner.

Q. You are in the sixth house from the railroad?

A. Off the railroad tracks; yes, sir.

Q. On which side as you go towards the railroad tracks?

A. On the right side.

Q. What was the first thing that attracted your attention with reference to this matter?

A. Well, I was standing at my gate, and I seen the soldiers coming down from Butler street; and when they came to the corner of Willow and the alley I seen the soldiers coming down the railroad; and the lieutenant went around the corner; and when the soldier got in front of
451 my gate I quickly slipped out of my gate and ran behind him, and when I come to the foot of the alley I seen three boys run around, one run toward 43d street, and another went over the cinder pile, and Will Crowley went towards the lumber pile; and I seen one soldier went down toward 43d street behind one boy, and the other one started to the three brick houses—one soldier stopped and halloed halt; I only heard one halloo halt. I seen Crowley stop at the end of the lumber pile and throw his hand up and say "Don't shoot; I will come back." And I seen Dowd—the lieutenant was standing in front of the brass foundry—and I seen the soldier turn to the lieutenant, and the lieutenant ordered fire, and Dowd fired the shot that killed Crowley; and after he had shot him he walked half ways and Crowley come the other half, and he fell in the soldier's arms, and the soldier helped him and put him down on the railroad tracks; and at that time Lieut. Drury came walking across and come to his assistance, after Crowley was down. And there was some lady says, "Why don't you get a pillow and put under that poor boy's head?" And the lieutenant said never mind, the ambulance would soon be there; and there was another boy there that took a little block and another man there took off his coat and wrapped
452 it around the block and put it under the boy's head. And then there was another fellow halloed for a drink of water, and some fellow got him a drink of water and took his handkerchief and bathed his head. And all the attendance I seen the lieutenant give the boy, he had a blue handkerchief and he took it out and put it in his wound and took it out again. And all this time the sun was shining down on him; and there was a train coming, and if a man hadn't stopped that train, that train, I suppose, would have killed Crowley; besides he was shot down like a dog.

Q. How far were you behind the soldiers?

A. Well, I was right behind them.

Q. I mean, about how close?

A. Well, I can't exactly say how close, but I was running and so were they.

Q. Where were you when you first saw the boys?

A. There was a telegraph pole there, and when I seen the boys coming running, there's this water plug, and that's where I stood.

Q. Where had the boys come from when you first saw them?

A. They came from 40th, I think.

Q. State whether or not they came around the corner?

A. Yes, sir.

453 Q. State whether or not you saw them as soon as they came around the corner?

A. Yes, sir.

Q. How far were the boys from the soldiers when the boys came around the corner?

A. Well, the boys were running in all directions, while the soldiers came right around from the alley there, towards the railroad.

Q. Do you know which soldier followed the boy towards 40th street?
A. Well, I didn't notice him particularly, but I took good notice of this fellow, and after he bended over Crowley I knew his face, because I watched him.
Q. State whether or not the officer that followed the boy towards 43d street was running or walking.
A. He was running. I didn't pay so much attention to him, because I stopped and turned round to watch what was going on.
Q. When you saw Crowley first, was he on the railroad track?
A. He was running right across from 40th and across towards that lumber pile.
Q. But when you first saw him, had he yet reached the railroad track?
454 A. I think he had, and was kind of crossing them.
Q. Do you know which one of the soldiers it was that fired the shot?
A. It was Dowd.
Q. How far was Dowd from Crowley when he fired the shot?
A. Crowley was this side of the three brick houses——
Q. Can't you tell by anything in this room?
A. Well, I don't know exactly. I am not a very good judge of that, because I am not American born and don't understand very well; I neither read nor write English.
Q. When Crowley was crossing the railroad track did you hear Lieut. Drury saying anything?
A. I seen the soldier turn towards the lieutenant, and the lieutenant said "Fire!"
Q. The soldier turned towards Lieut. Drury when the lieutenant said "Fire?"
A. He glanced towards where he was.
Q. And then what did Dowd do?
A. Dowd fired the shot.
Q. How far was Drury from Dowd when he hallooed "Fire?"
A. Well, Dowd was here, and he was further down by that brass foundry; I can't tell you exactly how many feet, for I don't understand that.
Q. Can't you tell in any other way about where you were
455 standing—can't you tell by the distance in this room?
A. Well, I guess it would be about as far as across this court room.
Q. State whether or not you could hear Drury distinctly say "Fire."
A. Yes, sir.
Q. I wish you would state whether or not the private fired immediately after Drury said "Fire."
A. Sir?
Q. State whether or not the soldier immediately fired after Drury said "Fire."
A. Yes, sir.
Q. At the time the soldier fired the shot, where was young Crowley?
A. He was by the lumber pile; he was facing the soldier.
Q. Did you see him when he turned?

A. Yes, sir; he turned right at the end of that lumber pile and threw his hand up and says, "Don't shoot; I will come back."

Q. Was that before or after the shot was fired?

A. That was before.

Q. It was before?

A. Yes, sir.

Q. And when the shot was fired, what did Crowley do?

456 A. Well, he raised his hand then and said, "You've shot me," and then he put his hand on the wound.

Q. And then he started back towards the soldier?

A. Yes; and the soldier towards him, to support him—halfway.

Q. You mean the soldier that fired the shot?

A. Yes, sir.

Q. How far did he walk before reached the soldier?

A. I guess about forty or fifty feet before he reached the soldier.

Q. And how long was it after Dowd reached Crowley until Lieut. Drury reached him?

A. Well, he came right up behind him then—after Crowley laid down on the tracks.

Q. I wish you would state whether the soldier called "Halt!" to Crowley at any time before he fired the shot.

A. I heard one halt.

Q. And that's the one you say Drury gave?

A. No; I said Dowd gave the halt.

Q. Did you hear any other command but that one?

A. No, sir; I did not.

Q. Was there anyone there said "Halt, or I will shoot," that you heard?

A. Well, I can't say that, for I didn't hear it.

457 Q. Well, could you have heard it, if that command had been given?

A. I don't know if I could or not. I might, but I didn't hear it.

Q. You heard the other one very distinctly?

A. Yes, sir.

Cross-examination by Mr. MILLER:

Q. How old are you?

A. Thirty-three years old.

Q. Where were you born?

A. I was born in Sweden.

Q. Do you always run after soldiers when they come along?

A. No, sir.

Q. Or policemen?

A. No, sir.

Q. But you did this day?

A. I did.

Q. What made you run after them this day?

A. Simply because I thought it was one of the private soldiers had escaped, and I wanted to see them arrest him.

Q. So you would run after the soldiers if you saw them come along?

A. Oh, I guess anybody would, to see what was wrong.

458 Mrs. ELIZABETH SCHERM, called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. HAYMAKER:

Q. Where do you live?
A. I live at 101 Almond alley.
Q. Are you married or single?
A. Married.
Q. What is your age?
A. Twenty-eight.
Q. How near were you living to Mrs. Long on the 10th of last September?
A. I lived next door.
Q. Toward the railroad track?
A. Yes, sir.
Q. You are married, you say?
A. Yes, sir.
Q. Living with your husband?
A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. What first attracted your attention that day; the 10th of September?

459 A. I was sitting on my steps when the soldiers come down the alley; I seen two soldiers and Lieut. Drury coming down, and they came down to Willow street, and Lieut. Drury left them there and went over Willow, and the soldiers come on down the alley. And Mrs. Long was standing by the gate, and she run after the soldiers; and I went down after them, too. I thought some one was hurt; that made me go after them, and when I got down to the bottom of the alley, right after Mrs. Long, I seen some boys running, and I seen just one soldier when I got down there; he was standing right in front of the brick houses—right facing the railroad; and this here one boy, I watched him particularly—that was Crowley—he was right in front of that lumber pile, and I saw him turn, and I heard the word "Halt" as soon as I got to the bottom of the alley, I heard "Halt." Lieut. Drury was at the corner on 40th street, right at the brass foundry, and I heard "Halt," then I heard "Fire." And the boy turned, and I saw him hold one hand up and say he would come back, and put his other hand down on his leg and said he was shot. And he turned and walked down the railroad track a piece, and the soldier went over to him and caught hold of him, and I saw the boy sink right down on the ground. And that's all

460 I seen of it. I went home.

Q. Do you know the name of the soldier that fired the shot?
A. Yes; it was Private Dowd. I know him to see him. He ran right in front of me.
Q. Is he in the court room?
A. Yes, sir.
Q. How far was Drury from Dowd at the time Dowd fired the shot?
A. I think it must have been about 70 or 80 feet, or something like that.
Q. Do you know who gave the command "Halt?"
A. Yes; Dowd.

Q. Then did you hear any other command after that?
A. No, sir; only "Fire." I heard that.
Q. Who gave that command?
A. I was sure it come from Lieut. Drury; he was standing right at the brass foundry; right on 40th street.
Q. You heard the word "Fire," did you?
A. Yes; I heard it plain.
Q. What is your best impression as to where it came from?
A. Lieut. Drury.
Q. Before the shot was fired, could you see Drury?
A. Yes, sir.
Q. Where was he at that time?
461 A. Right at the brass foundry; right on 40th street.
Q. On the railroad track, or on 40th street?
A. He wasn't on the railroad track; he was near to it, though.
Q. Near to it, on 40th street?
A. Yes, sir.
Q. Just at the time the shot was fired what was Crowley doing?
A. He had just turned. It seemed to me he had just turned and put his hand up and said he would come back.
Q. You say he was turned at the time the shot was fired?
A. Yes, sir.
Q. How did he hold up his hand?
A. He held his hand up like that, and he put it right down, and he took his other hand in a minute and put it on his leg.
Q. Did he put his hand down on his leg before the shot was fired or afterwards?
A. No; it was afterwards. I saw him put that hand down first, and then put the other hand down, like that.
Q. How long was it after he turned until the shot was fired?
A. It just seemed to me a second; it just seemed to me to happen right away.
462 Q. Was it before or after the shot was fired that he put his hand on his leg?
A. Afterwards.
Q. Then where did he go?
A. He walked to the soldier.
Q. To what soldier?
A. Private Dowd.
Q. What did the soldier do?
A. He walked to him a little piece and caught hold of him.
Q. Then what did Lieut. Drury do?
A. I went away as soon as ever the boy reached the soldier. I had left my house open, and I went away to shut my house up, and I didn't see any more of it.

Cross-examination by Mr. MILLER:

Q. Did you say that Crowley had turned before or after the shot was fired?
A. Before.
Q. He had his hand up before or after the shot was fired?
A. Before.

Q. And he put his hand down on his leg before or after the shot was fired?

A. Afterwards.

Q. Did you see Mattie Trewilliger there that day?

A. I did.

463 Q. Do you know her?

A. I know her to see her, but I never spoke to her.

Q. Never spoke to Mattie Trewilliger?

A. No, sir.

Q. Do you know Mrs. Long?

A. Yes, sir.

Q. Did you see her there that day?

A. Yes; I went down right behind her.

HARRY KELLER, called on behalf of respondent, sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you live?

A. 4427 Davidson street.

Q. Were you living there on the 10th of last September?

A. Yes, sir.

Q. Were you acquainted with young Crowley at that time?

A. I was.

Q. Where were you when the trouble began?

A. I was first in the fruit stand, at 4007 Butler street; I was eating ice-cream soda when the two soldiers and the lieutenant came up

464 Butler street; me and a friend was drinking ice-cream soda, and he said to me, "Let's see where the soldiers are going;" and we went out to the door and seen the soldiers turn into Almond alley, and we followed them until they got to Willow street, and Lieut. Drury turned over Willow street, and the two soldiers went on down Almond alley, and we followed the two soldiers down Almond alley, down to 40th street.

Q. How close were you to the soldiers?

A. About as far as I am from you. [About 12 feet.]

Q. State what happened.

A. The two soldiers that—I guess the boys must have got frightened or something, for the two soldiers, they turned round and run back of them; one run to one side of the track and the other stayed on the other side of the track; and they halloed "Halt," I think; and nobody stopped to halt; then this here soldier he went and fired.

Q. Who halloed halt?

A. This here soldier, Dowd.

Q. Where was Dowd when he halloed halt?

A. On the railroad track.

Q. And did you hear anything else after Dowd said halt?

A. I heard somebody halloing "Fire."

Q. Do you know who it was that halloed fire?

465 A. I ain't positive who it was.

Q. Well, what is your best judgment?

A. Well, I couldn't say.
Q. Well, was it the same man that halloed "halt" that halloed "fire?"
A. No; it wasn't him.
Q. How soon after Dowd halloed "halt" was it until somebody said "fire?"
A. Well, it was right afterwards.
Q. And then was the shot fired immediately after the word "fire?"
A. Yes, sir.
Q. Where was Crowley when somebody halloed "fire?"
A. On the railroad track.
Q. And which way was he facing when the shot was fired?
A. I am not positive, but I think he was trying to face the soldier.
Q. You are not positive, but you think he had turned to face the soldier?
A. Yes, sir.
Q. Then what happened, after the shot was fired?
A. I got scared then, and Lieut. Drury went and followed me with the gun, and as soon as he got away from me I got out of there.
466 Q. What did Lieut. Drury do?
A. He came in front of me and another fellow and stopped us then, with that great big horse pistol he had.
Q. What did he say to you?
A. He says: "Just halt right where you are and stand there."
Q. Did he point his pistol at you?
A. Right at our legs.
Q. How far was he from you at that time?
A. Right in front of us.
Q. What did you do then?
A. Stood there.
Q. And what did Drury do?
A. He stood there, too, for a couple of minutes.
Q. Then what did he do?
A. He went over to Crowley.
Q. And of course you went some place else?
A. I went up street and then come back down in the patrol wagon.
Q. Who was with you at the time?
A. George Little.
Q. Where is he now?
A. I don't know where he is.
Q. Does he live out near your place?
A. He lives in Lawrenceville some place.
467 Q. Have you seen him lately?
A. No; I haven't seen him for about a month.
Q. Where did he live when you last saw him?
A. On Willow street.
Q. Do you know the number?
A. No, sir.
Q. Did he come down the alley with you?
A. Yes, sir.
Q. And was he with you all the time?
A. He was the one that was with me when the halt was given.

Q. Was he with you when Drury halted you?
A. Yes, sir.
Q. And did he leave the place with you when you went away?
A. No, sir; we walked several streets, like on a run, up 40th street.
Q. Was he with you when some one said "fire?"
A. Yes, sir.
Q. And was he with you when Dowd said "halt?"
A. Yes, sir.
Q. How old a boy is Little?
A. He's older than I am; I guess he's about nineteen, or something like that.
Q. Do you know where he works?
468 A. No, sir; I don't.
Q. Between what streets on Willow does he live?
A. 40th and 41st.
Q. Do you know the house?
A. No; I don't know what house it is.
Q. What was his father's name?
A. George, too.

Cross-examination by Mr. MILLER:

Q. You and George Little followed the soldiers down Almond alley?
A. Yes, sir.
Q. When you got down Almond alley did you follow Drury or the soldiers?
A. We followed the soldiers.
Q. And you followed them up until the boys came running out from behind the corner, did you?
A. Yes, sir.
Q. Where were you at that time?
A. Right back of the soldiers.
Q. How far back of the soldiers were you? Had you come around the corner already?
A. We come right around back of them.
Q. But they had to go down, and when they got down to the
469 platform in front of Bonar's brass works—you know that platform?
A. I didn't take notice to that.
Q. And before they got to the platform the boys were coming out?
A. Yes, sir.
Q. They came out ahead of the soldiers?
A. The soldiers could have run in front of them, but they turned and run after them.
Q. They turned around and ran back of them?
A. They turned around and ran back of them and stopped. They didn't take more than two steps.
Q. And you say one of the boys ran up 43d street?
A. They all ran up there.
Q. Didn't you say one boy cut across the cinder pile?
A. No.
Q. How many boys ran up towards 43d street?
A. Three.

Q. And you saw Crowley running out towards the lumber pile, did you?
A. Running up the railroad track.
Q. They were all running pretty fast?
A. Well, I don't know.
Q. Didn't one of them have a cap in his hand?
470 A. I didn't notice that.
Q. And at that time you heard somebody halloing "halt?"
A. Yes, sir.
Q. You don't know who it was? You are not positive about that?
A. Yes; it was Dowd halloed "halt."
Q. But you are not positive who said "fire?"
A. No, sir.
Q. You don't know which direction it was, either, do you, that you heard the word "fire?" There were two soldiers, weren't they?
A. One was a corporal.
Q. Yet he had soldier's clothes on?
A. Yes, sir.
Q. And it might have been one or the other that halloed "fire," as far as you know?
A. I guess so.
Q. Then after that you say you were held up by Lieut. Drury?
A. Yes, sir.
Q. Down beyond the corner?
A. Yes, sir.
Q. Had you turned around the corner at that time?
A. I had been standing there.
471 Q. Then just as you were standing there Lieut. Drury came around the corner?
A. I don't know where he came from.
Q. But he came right up to you then?
A. Yes, sir.
Q. And he stood you up with this other boy, George Little?
A. Yes, sir.
Q. And he said "halt," did he?
A. Yes, sir.
Q. Then what else did he say?
A. He just said, "Stand here."
Q. Then did the shot take place before or after that?
A. The shot took place before that time.
Q. Then he went over to where the soldier w s and Croley?
A. Yes, sir.
Q. Did you know Crowley?
A. Yes, sir.
Q. Had you noticed him at the time the shot was fired?
A. Yes, sir.
Q. You are not positive which way he was facing, are you?
A. Yes; I think he was facing the soldier.
Q. Wasn't he running at the time? Do you mean to say that Crowley stopped running before the shot was fired?
A. I said he was facing the soldier when the shot was fired.

472 Q. Was he running towards the soldier?
A. No, sir.
Q. Well, he kept on running all the time until the shot was fired?
A. He had started to run in the first place, and when he heard "fire" he stopped and faced.
Q. When he heard "fire"—and that was after the command to halt, was it?
A. Yes, sir.
Q. Where was he at the time?
A. On the railroad track.
Q. On the railroad track, or was he next the lumber pile?
A. Well, he was on the railroad track, along by the lumber pile. The railroad track is there just the same.
Q. And it was after that time that Lieut. Drury came up to you and stood you up?
A. Yes, sir.
Q. How often did you hear "fire?"
A. I only heard that once.
Q. How often did you hear the command to halt?
A. About three times, I guess.

473 GEORGE JEFFRIES, called by the respondents, sworn, testified as follows:

Direct examination by Mr. HAYMAKER:

Q. What is your age?
A. Twenty-four.
Q. What do you do?
A. I am an electrician.
Q. Where were you living on the 10th of September last?
A. 96 41st street.
Q. What was the first thing that attracted your attention that morning?
A. I was up at the arsenal hotel drinking beer when a man came in and said he saw two soldiers running down the alley; and shortly after another man came in, and he says "They are after an escaped prisoner," so I ran down the alley, and I guess it was five minutes afterwards before the shooting occurred that I got there; when I got down to the foot of the alley the boy was lying on the railroad track with a shot through his leg, and his leg was exposed, and I was standing there and I asked the lieutenant there if we hadn't better send for an ambulance or a patrol wagon; and just at that he gave the order to keep the crowd back,
474 and my hat fell off and was tramped on. That's about all I know about the case.
Q. When you arrived there, was there a crowd about the wounded boy?
A. Well, there was about fifteen or twenty.
Q. And what was the condition of the wound at that time when you saw it?
A. It was bleeding.
Q. I wish you would state whether or not you could see the wound in the leg.
A. Yes, sir.
Q. What was Lieut. Drury doing when you arrived?

A. Bathing with a blue handkerchief.
Q. Where was Dowd at that time?
A. Standing at the corner of 40th street.
Q. You were not near enough to hear the shot, were you?
A. No, sir.
No cross-examination.

475 DAVID FITZSIMMONS, called on behalf of the respondent, sworn.

Direct examination by Mr. HAYMAKER:

Q. What is your business?
A. Police officer.
Q. How long have you been on the force?
A. The last four years.
Q. What was the first notice you had of this trouble?
A. Well, I know nothing of this trouble at all.
Q. Were you there at the time the boy was hurt?
A. No, sir.
Q. Did you go to the scene of the trouble at all?
A. No, sir.
Q. Did you have any conversation with Lieut. Drury or Dowd at any time after that?
A. No, sir.
Q. Did you see Crowley after he was wounded?
A. No, sir; I didn't.
Witness stood aside.

476 R. H. ROBINSON, called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. HAYMAKER:

Q. Are you on the police force?
A. Yes, sir.
Q. How long have you been an officer on the police force?
A. About nine years.
Q. You know nothing about the shooting of young Crowley?
A. No, sir.
Q. I wish you would state whether you patrol the neighborhood of the arsenal?
A. Yes, sir.
Q. I wish you would state if you know anything with reference to the discipline of the soldiers, or the conduct of the soldiers in the arsenal grounds—before September the 10th?
A. Well, we had considerable trouble with them around the vicinity of the arsenal there during last fall and the months of August and September.
Q. What kind of trouble was it, officer?
A. Drinking and disorderly.

Mr. MILLER:

Q. Was this inside or outside?
A. Outside; on the public highway.

477 By the COURT. I think that would be going pretty far, unless you connect it with this transaction.

Mr. HAYMAKER:

Q. Did you ever have any occasion to see them inside of the arsenal walls?

A. Oh, just going by there and patrolling the district.

Q. Do you know anything about the discipline of the men inside of the arsenal walls?

A. No, sir; the only time I was in there was during the carnival—the only time I was ever in the arsenal in my life—and then we had no time to pay any attention to the soldiers.

Q. Were you ever inside the grounds at any time?

A. Only the time I tell you of—during the carnival. There was two different carnivals there; two weeks each time.

Q. Did you have any occasion before the 10th of September for going to the arsenal grounds?

A. We tried to get in there one night to get a couple of soldiers, and they closed the gates on us; told us not to come in there; that we had no business in there. One Saturday night a couple of soldiers attacked some citizen going along there, and kicked him all over the street.

(Objected to, as incompetent. Objection sustained.)

No cross-examination.

478 John Raup was called on behalf of the respondents, but did not answer, and Officer Walsh was sworn to prove service of subpœna on the witness. The officer testified that he had gone to the home of the witness the night before, but did not find the boy at home, but the father of the witness promised to have him in court this morning.

Counsel for respondent state that with the testimony of this witness and one more, they will conclude their case, and ask for a recess to enable them to procure the two witnesses.

Counsel for respondent offer in evidence the finding of the coroner of Allegheny County upon the inquest of the death of William Crowley, the deceased named in these proceedings, marked "Exhibit A" of this date.

479 RALPH W. DRURY recalled, on behalf of the respondent.

Examination by Mr. HAYMAKER:

Q. Lieut. Drury, you were first arrested after this shooting by whom?

Mr. YOUNG. He never was arrested.

Mr. HAYMAKER:

Q. Well, you were detained, I believe, at the coroner's inquest?

A. Yes, sir.

Q. You were held by the coroner after the inquest was over?

A. Yes; I think so.

Q. And from there you went to the Quarter Sessions Court and gave bail for the next term of the Oyer & Terminer Court?

A. Yes, sir.

Q. Who were your bondsmen at that time?

A. Mr. Miller was bondsman for me for that one night, but for the next term of court H. P. Bope was my bondsman.

(It is admitted for the purpose of evidence that the witness, R. W. Drury, and John Down gave recognizance with sureties for their appearance at December sessions, 1903, of the Court of Oyer & Terminer of Allegheny County, to answer to all charges in the sum of $5,000.)

480 Q. I wish you would state whether or not you were committed to jail since that time?

A. Yes, sir.

Q. When?

A. I believe it was two weeks ago last Monday?

Q. Who brought you to jail at that time?

Mr. YOUNG. We will admit that John Bope took out a bail piece as surety for R. W. Drury and John Down and surrendered them in open court, and that Judge McClung, of the Court of Oyer & Terminer, ordered a commitment and directed the officer to take charge of them.

Mr. HAYMAKER:

Q. Who brought you to the Criminal Court at the time you were committed to jail?

A. Mr. Bope.

Q. Your bondsman?

A. Yes, sir.

(Objected to by counsel for the U. S. Government.)

Mr. MARRON. The purpose is to show that the restraining
481 of this relator and his associate was, by agreement, for the purpose of establishing custody in the jail of Allegheny County before issuing out this writ.

By the COURT. You may pursue your examination, if you desire to raise this question.

Mr. HAYMAKER:

Q. Did Mr. Bope call at the arsenal for you?

A. No, sir.

Q. Where did he meet you?

A. At his office.

Q. Did he send for you to come to his office?

A. No, sir.

Q. How did you happen to get to his office?

A. I went there.

Q. For what purpose?

A. By direction of the United States counsel in this case.

Q. Had you a conversation with the United States district attorney before you went to Mr. Bope's office?

A. I think I had; yes, sir.

Q. And he advised you to do what?

A. I think this case was turned over to the United States attorney, and when he took up the case, I assume that his method of pro-
482 ceedure was that I was to obey or follow his method of proceedure.

Q. I know; but what did he advise you to do?

A. He sent me to get Mr. Dowd.

Q. Well, he told you to go to Mr. Bope?

A. Yes, sir.

Q. And Mr. Young advised you to give yourself up to the bondsman?

A. No; he didn't advise me that.

Q. But he told you to go to your bondsman?

A. Yes, sir.

Q. And to have your bondsman surrender you?

A. I don't know that he told me that. I know that the bondsman did surrender me.

Q. What did Mr. Young tell you to do?

A. He told me to go and get Mr. Dowd and go over to the court of quarter sessions, I believe.

Q. Go on, and state everything that happened.

A. Shortly afterwards I was surrendered by my bondsman, as well as Private Dowd, and taken over to the jail by some officer whose name I don't know.

Q. What was the purpose of that?

A. I suspect to institute habeas corpus proceedings.

Q. So as to get you into jail that there might then be an application for this writ of habeas corpus?

483 A. I think that was very likely the object.

Q. You were advised by the United States district attorney that in order to obtain the writ it was necessary for you to go to jail?

A. No, sir; I know that, from my own personal knowledge.

Q. Well, you knew that was necessary?

A. Yes, sir.

Q. And did your sureties know that, too?

A. I suspect they did.

Q. And with that idea you had yourself committed to the Allegheny County jail, so that the writ might be applied for?

A. I was committed.

Q. Well, you were committed so that the writ might be applied for; and it was with that understanding that you came into the quarter sessions court?

A. I suppose that was the method of procedure.

Q. Well, it was for the purpose of carrying out this method of procedure that you talk about that you came into the criminal court?

A. I was surrendered by my bondsman.

Q. Well, you were surrendered by your bondsman under an arrangement between you and the district attorney that that was necessary?

484 A. There was no arrangement between me and the district attorney.

Q. Well, between you and your bondsman?

A. I made no arrangement with my bondsman. He surrendered me, I suppose, at the suggestion of the district attorney.

Q. Well, you knew, when you were taken to the criminal court, what you were taken there for?

A. I judge I did.

Q. Oh, well, didn't you know what you were taken there for?

A. Yes, sir.

Q. And it was for the purpose—or that you might be placed in jail so as to obtain a writ of habeas corpus?

A. Yes, sir.

(It is agreed that this same testimony applies to the proceedings as to Private Dowd.)

Court here took a recess until 2 o'clock p. m.

485 And now, Thursday, February 25, 1904, at two o'clock p. m., met pursuant to adjournment.

GEORGE LITTLE, called in behalf of the respondents, being duly sworn, testified as follows:

Direct examination by Mr. MARRON:

Q. Where do you live, George?
A. 40th street.
Q. Were you living there on the 10th of September last?
A. Yes, sir; at the same place, 40th and Willow.
Q. Do you remember the tenth of September last?
A. Yes, sir.
Q. Were you down the railroad that morning?
A. Not until after the shooting was over.
Q. Where did you say you lived?
A. Willow street.
Q. Did you see the officers on that morning?
A. Yes, sir.
Q. Where did you see them?
A. I seen them on Butler street.
Q. Where were they going at that time?
486 A. Coming out Butler street. I and my friend was in an ice-cream parlor when they came along Butler street.
Q. From which direction?
A. They came from the direction of the arsenal.

By the COURT:

Q. You have been calling them officers, Mr. Marron. Do you mean the soldiers?

Mr. MARRON. Yes, sir; I will bring that out now.

By Mr. MARRON:

Q. Do you know Lieut. Drury?
A. I know him to see him.

Mr. MARRON. Stand up, Mr. Drury.

(Drury rises.)

Q. Do you mean this gentleman?
A. Yes, sir.
Q. Do you know Privates Dowd and O'Keefe?
A. Yes, sir; I know them to speak to them.
Q. Did they come along Butler street?
A. Yes, sir.
Q. What became of them then?
487 A. They turned down Almond alley.
Q. Where were you?
A. We were in the ice-cream parlor.

Q. How near did you get to them?

A. We were very nearly up to them at Almond alley and Butler street, and when they turned down Almond alley we started after them. We didn't want to get on top of them. We thought they were after a deserter. They were going pretty fast. They started on double time when they got to the alley and walked down the alley double time, and when they got to Willow street we were up at Crowley's grandmother's, where Crowley was buried from.

Q. How far above Willow street?

A. I couldn't judge very well. It is about five or six houses.

Q. What became of them then?

A. I seen Lieut. Drury motion for them to go down the alley and that *that* he would go that way. When I got to Willow street I stopped and I didn't know which way to go. I wanted to see who the deserter was, or if they were going to catch him. I stopped there and my friend got ahead of me.

Q. Who was he?

A. Harry Kellar.

Q. Which direction did he go?

A. He went down the alley, so I followed right after him.

488 Q. Where were you when the shot was fired?

A. I was at the third house up from the railroad when I heard the shot fired.

Q. And where was Kellar?

A. Kellar was at the corner of the alley and the railroad. When he turned around the corner I was pretty near down there. After the shot was fired he just turned around the corner when I got there.

Q. You were at third house up the alley?

A. Yes, sir; when the shot was fired.

Q. There are three dwelling houses on the corner of the alley and the railroad ground?

A. Yes, sir.

Q. And those are the houses that you refer to?

A. Yes, sir.

Q. What was the first thing that you saw at the railroad?

A. When I was on the railroad?

Q. Yes; when you got in view of all these people?

A. Well, there was a pretty big crowd around.

Q. Did you see Drury?

A. Yes, sir.

Q. Where did you see him first?

A. As soon as I turned around the corner he stopped Kellar, and I seen him ask him. I could tell what he said from the motion of

489 his lips—"Are you one of those fellows?" He said, "No; I followed right back of you; didn't you see me?"

Q. Where were you at the time?

A. I was right at the corner of the alley and the railroad.

Q. What else did you see?

A. Well, I don't remember. When I heard the shot fired I got excited.

Q. Did you know who fired the shot?

A. I couldn't see from where I was.
Q. Do you know, then, who fired the shot?
A. No, sir.
Q. Before that shot was fired did you hear any person call "halt?"
A. No, sir; I was too far up the alley. I was too excited; if I did, I didn't know it. When a bucket of water was suggested I got it. It was me that got the bucket of water. I ran in and asked for a bucket of water and a tin cup.
Q. Where did you see Dowd first?
A. On the railroad, right at the corner of 40th street, opposite Drury.
Q. Where was Crowley?
A. Crowley was just slanting from Dowd.
Q. What distance from him, as nearly as you can estimate?
A. The distance of 40th street to the alley.
Q. Was he on the river side of the tracks?
490 A. Yes, sir; near the lumber pile.
Q. Was he still standing when you saw him?
A. I couldn't say. I was all excited. Just run down to see what was going on.
Q. When the lieutenant and these two privates parted at Willow street and Almond alley did they go away at the same speed?
A. I couldn't say. When I got down to Willow street I stopped there and didn't know which way to go at first. That is how my friend got ahead of me. He got on the scene before I did. As soon as I seen him going down the alley I went after him. I was at the third house up the alley when the shot was fired.
Q. When you first saw Dowd did you see the other private?
A. Yes, sir.
Q. Where was he?
A. He was on this side of the Bonar Machine Company when I seen him.
Q. On the side next to Almond alley?
A. Yes, sir; right near where the three dwelling houses are.
Q. Did he have anything in his hands?
A. He had a rifle or gun in his hands.
Q. In what position?
A. I couldn't say. I seen him going along there. He was standing there when I got there.
491 Q. Did you hear what Drury said to these two privates at the corner of Willow street and Almond alley?
A. No, sir; I only saw him motion.
Q. You saw him make a motion?
A. Yes, sir; at the corner of Willow street and Almond alley I seen him make a motion for them to go down the alley—at least I think I did.
Q. For them to go down the alley, and he would go down 40th street?

Cross-examination by Mr. MILLER:

Q. Did Drury have anything in his hand when you saw him stop Kellar?
A. He had a revolver.
Q. In what position?
A. He had it down at this thigh.

Q. Could you hear plainly what he said to Kellar?

A. Not very plainly. Harry told me afterwards that he asked him whether he was one of those fellows, and he said, "No, didn't you see me following you down from Butler street?" We came right back of them. Everybody about there asked what was the matter, and we said a deserter had run away from the arsenal.

492 A. We didn't know.

Q. Did you join the crowd around Crowley?

A. Yes, sir.

Q. Did you see what happened over there?

A. No, sir.

Q. Didn't you see what happened over there after the shooting was done?

A. Well, Crowley was laying down on the ground with a log under his head. Somebody hollered, "Somebody get a bucket of water," about three times. I just went over to Dubarry and Company's and asked for a bucket of water and a tin cup.

Q. Did you see the police there?

A. Yes, sir; after the shot was fired.

Q. Did you hear any conversation between the police and Drury?

A. No, sir; I couldn't say; I was too excited.

493 JOHN ROUP, a witness called in behalf of the respondents, being duly sworn, testified as follows:

Direct examination by Mr. MARRON:

Q. How old are you?

A. 18 years next birthday.

Q. Where do you live?

A. I live at 3252 Penn avenue.

Q. Did you know William Crowley?

A. Yes, sir.

Q. How long?

A. I knew him a good little while.

Q. You lived out there for a long time, have you?

A. Not very long; no, sir. I have only been living there about one year and two months.

Q. Do you remember this shooting on the tenth day of September last?

A. Yes, sir.

Q. Where were you at that time?

A. I was on a box car across from Almond alley on the Allegheny Valley Railroad tracks, on the side of the track at the plaster works.

494 Q. What was the first thing you saw?

A. I was up on the box car, playing. The first thing I seen was I seen Crowley and some boys with copper down at the wall. I didn't pay any attention to them at that time. After while I was up there playing again when I seen the soldiers—Lieutenant Drury—come down 40th street, and Private Dowd, and I couldn't say how many soldiers came down the alley; I heard the soldier call halt three or four times. I couldn't say whether there was a command to fire or not. I jumped off the box car and got between the lumber piles of Mr. Dubarry and was trying to get up there the best way I could.

Q. When the shot was fired where was Crowley?
A. Crowley was facing the soldier when the shot was fired, I am pretty sure. He threw up his hands and said, "Don't shoot, I will surrender." Then he threw his hand down to his leg and said, "God, you shot me."
Q. This box car was where, with reference to the alley?
A. It was about twenty-five yards away from Almond alley?
Q. Towards where?
A. Towards 41st street.
Q. And on which side of the tracks was it?
A. The river side.
Q. Did it stand on the lumber-yard side of the railroad?
495 A. Yes, sir; right near the lumber pile.
Q. And you boys had been playing on it?
A. Yes, sir.
Q. Were you on the inside of the car or outside?
A. On the top of the car.
Q. Then you had a good view of the whole neighborhood?
A. Yes, sir; I had a good view of everything.
Q. The first thing you saw was Drury coming from 40th street?
A. Yes, sir; and then I happened to look and saw private Dowd coming down the alley with some more soldiers; couldn't tell how many.
Q. When you saw Drury coming out of 40th street where was Dowd?
A. At Almond alley and the railroad.
Q. Who did you see first; Lieut. Drury, or the soldiers?
A. I saw the soldier before I did the lieutenant.
Q. Where were the two privates when you saw Drury first?
A. Private Dowd; he was on the siding track—that is, on the track that faces towards Penn avenue. The other soldier was pretty near the same track with him, facing Forty-first street.
Q. You are not sure whether there was an order to fire or not?
496 A. No, sir.
Q. What is your best impression about that?
A. Well, I couldn't just say. I didn't hear anybody holler fire.
Q. Before that shot was fired did you see Drury?
A. I am pretty sure I did.
Q. Do you know Drury?
A. I know him to see him.
Q. Do you see him here?
A. Yes, sir; he is sitting back there.
Q. Are the privates in the room here?
A. Yes, sir.
Q. Were you standing up on top of the box car at that time?
A. Yes, sir.
Q. Did you see whether Drury had anything in his hand or not?
A. No, sir; I didn't take notice. I was excited; pretty sure he didn't.
Q. Were those soldiers coming out of the alley rapidly?
A. Pretty fast.
Q. Running; or walking fast?
A. It wasn't just exactly what you would call running very fast. They were walking very fast when I saw them.
Q. Was Drury running?

497 A. When I saw Drury he was standing still.

Q. Was he in view of the soldiers on the railroad?

A. Yes, sir; he was in view of the soldiers.

Q. They were in view of him, were they?

A. Yes, sir; he was right in the back.

Q. What do you say as to the calling of halt?

A. He hollered halt three or four times.

Q. And what did Crowley do?

A. Crowley threw his hands up, facing the soldier, and said, "Don't shoot; I will surrender;" then threw his hand down to his leg and hollered, "God, I am shot."

Q. Did he say he would surrender before the shot was fired?

A. I couldn't say whether it was before the shot was fired or after.

Q. Where was Dowd at that time?

A. Private Dowd was between the siding track and the main track near the factory.

Q. About what distance was he from Crowley?

A. He was about thirty feet or something like that.

Q. Was he towards Fortieth street?

A. He was towards Fortieth street when he fired.

Q. Where was the other private, if you saw him?

A. He was between the pole and Private Dowd, facing 41st street.

Q. Did you see whether or not he had a gun?

498 A. He had a gun.

Q. Do you know whether or not he was using it?

A. I couldn't say whether he was using it. He had it to his shoulder. The lieutenant said, "That is enough; we have one of them."

Q. What did the lieutenant say?

A. He said, "That is enough; we have one of them," and then he put his gun down.

Q. Had he called halt?

A. Yes; he hollered halt two or three times to the other fellow.

Q. When was that?

A. Just at the same time that the shot was fired.

Q. He raised his gun, you say?

A. He had his gun raised at the other fellow.

Q. That was not Crowley?

A. No, sir; it was not Crowley.

Q. Was that the young man that was running towards Forty-first street?

A. Yes, sir.

Q. You say Drury said to him, "That is enough?"

A. Yes; I am pretty positive that is what he said.

Q. Did you stand looking at them all the time?

A. Not all the time. When the shot was fired I got off the car.

499 Q. You got out of the way, did you?

A. Yes, sir; I came out on the railroad then.

Q. I suppose a crowd collected in a short time?

A. Yes, sir.

Q. At the time the shot was fired was there any other persons on the track than those you have named?

A. I saw Mrs. Terwillerger and Mrs. Long.

Q. At the time the shot was fired?
A. Yes, sir.
Q. You say Mrs. Long and Mrs. Terwillerger?
A. Yes, sir.
Q. You saw them, did you.
A. Yes, sir.
Q. Did you see the police there?
A. Yes; I seen them there, but that was a good while after the shot was fired.

Cross-examination by Mr. YOUNG:

Q. How many times did you hear halt called?
A. Three or four times.
Q. Before he refused to stop?
500 A. Yes, sir.
Q. After Private Dowd called halt, then you heard fire?
A. No; I didn't hear fire; couldn't say positive about that.
Q. Did you hear him call "Halt, or I will fire?"
A. Yes, sir.
Q. Who said that?
A. Dowd.
Q. Private Dowd called "Halt, or I will fire?"
A. Yes, sir.
Q. Then you heard the shot fired?
A. Yes, sir.

Adjourned for argument until Friday, February 26th, 1904, at ten o'clock a. m.

501 UNITED STATES OF AMERICA,
Western District of Pennsylvania.

I, H. D. Gamble, clerk of the Circuit Court of the United States of America for the Western District of Pennsylvania, in the Third Circuit, do hereby certify the foregoing to be a true copy of the original record and proceedings had in the Circuit Court of the United States in and for the Western District of Pennsylvania, wherein the United States ex relatione Ralph W. Drury and John Dowd for writ of habeas corpus and Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, respondent, so full and entire as the same are on file, and now remaining among the records of the said court, in said clerk's office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Pittsburgh, in said district, this 23rd day of November, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and 29th.

[SEAL.] H. D. GAMBLE,
Clerk U. S. Circuit Court.

(Indorsement on cover:) File No. 19540, W. Pennsylvania, C. C. U. S. Term No. 440. The United States ex rel. Ralph W. Drury and John Dowd, appellants vs. Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania. Filed November 25, 1904. File No. 19540.

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Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES EX REL. RALPH W. Drury and John Dowd, appellants,
v.
EDWARD LEWIS, WARDEN OF THE COMmon jail of Allegheny County, Pennsylvania.
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF OF UNITED STATES IN BEHALF OF APPELLANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES EX REL. RALPH W. Drury and John Dowd, appellants,
v.
EDWARD LEWIS, WARDEN OF THE COMMON jail of Allegheny County, Pennsylvania.
No. 126.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF OF UNITED STATES IN BEHALF OF APPELLANTS.

The petitioners, Lieutenant Drury and Private Dowd, were and now are soldiers in the Regular Army of the United States, and on the 10th day of September, 1903, were in charge of the Allegheny Arsenal at Pittsburg, Pa.; while attempting to arrest one Crowley, a private citizen, who had just committed a felony on the Arsenal property, and who was fleeing for the purpose of avoiding arrest, Dowd fired at and inflicted a mortal wound upon Crowley, from which he died on the same evening. The State of Pennsylvania thereupon indicted these soldiers on the charge of murder in the first degree, and manslaughter, and

asserts its right through the officials of Allegheny County to place these men on trial for their lives. The Government takes the position that these soldiers at the time of the commission of the homicide were engaged in performing a duty imposed upon them by the Constitution and laws of the United States, and that the State of Pennsylvania is without jurisdiction to call these men to account in its own courts upon the claim that a crime has been committed against the laws of that Commonwealth.

THE POINT IN THE CASE.

The Commonwealth of Pennsylvania is without jurisdiction to prosecute the petitioners on the charge of murder, for the reason that the homicide was committed by the petitioners while in the discharge of a duty imposed upon them by the Constitution and laws of the United States. In re Neagle, 135 U. S., 1.

STATEMENT OF THE FACTS.

On the 10th day of September, 1903, Ralph W. Drury, one of the petitioners, was a commissioned officer of the United States Army, with the rank of second lieutenant, and had under his command a detachment of twenty enlisted men, of whom John Dowd, the other petitioner, was one, stationed at the Allegheny Arsenal in the city of Pittsburg, in Allegheny County, Pa., that arsenal being a subpost of Fort Niagara, N. Y. From time to time, before September 10, 1903, large quantities of copper down spouts and eave troughs had been stripped from some of the buildings on the arsenal grounds and the ma-

terial stolen by persons unknown to the officers in charge of the arsenal property. Other depredations had also been committed about the arsenal grounds, such as the breaking of window lights. Lieutenant-Colonel Robertson, the commanding officer at Fort Niagara, on the occasion of an inspection of the Allegheny Arsenal in July, 1903, directed Lieutenant Drury to use his best endeavors to stop the depredations and to that end ordered him to establish a patrol day and night on the arsenal grounds, and to apprehend and arrest any person or persons committing depredations on the arsenal property. We may observe in passing that in the absence of any such specific command from Lieutenant-Colonel Robertson, Lieutenant Drury and the men under him were required by section 771 of the Regulations for the Army of the United States to summarily arrest and turn over to the civil authorities for trial persons caught in the act of stealing public property.

Shortly before 10 o'clock on the morning of September 10, 1903, word was received at the Allegheny Arsenal by telephone that some persons were then engaged in stealing copper from one of the buildings on the arsenal grounds. Lieutenant Drury thereupon took John Dowd, who was then on guard duty, and another private soldier, each armed with a rifle and ammunition, and passed out of the arsenal grounds through the gate to Butler street, and the three thence proceeded by way of Butler street and Almond alley toward the Allegheny Valley Railroad. This expedition

was undertaken for the purpose of arresting the persons who were stealing copper from the arsenal buildings, as had been reported by telephone. Lieutenant Drury informed the two men who were with him of the reported stealing of copper and instructed them to continue down Almond alley and to arrest any person coming from the arsenal. Lieutenant Drury left Almond alley at the corner of Willow street and went down Willow street to Fortieth street, which runs along but outside the arsenal wall, and proceeded down Fortieth street to its foot, where were congregated three or four young men, among whom was William H. Crowley, the deceased. It appears that these young men had been engaged only a few minutes before in stealing and carrying away certain copper from one of the arsenal buildings, and that Crowley had been seen in the very act by the party who telephoned the fact to Lieutenant Drury. Crowley had thrown the copper down from the wall upon the ground, and he and his companions had sold the copper to a Jew peddler for $3 or $4 just prior to the time when the soldiers appeared upon the scene for the purpose of effecting the arrests. As soon as these young men saw Lieutenant Drury approaching, being conscious of their own guilt, one of them cried "Here comes the soldiers!" and they all fled for the purpose of avoiding arrest. They fled in different directions across the railroad tracks, and Private Dowd, observing them fleeing from the very place where the larceny had been committed, and by these

very young men, as it afterwards turned out, concluded very naturally that they were the thieves, and thereupon pursued Crowley, calling upon him to halt, four times, accompanying the call to halt the last two times with the warning that he would fire unless Crowley halted. Crowley refused to halt and continued his flight, and just as he was about to disappear between certain lumber piles and thereby escape Dowd fired, the bullet entering the left leg of Crowley from the rear and passed out in front. Crowley then turned around and came toward Dowd, who remained and assisted him to lie down. His wound was thereupon attended to by Lieutenant Drury, who had come up, and he was subsequently removed to the West Pennsylvania Hospital, where he died that evening. At the time of the shooting Drury, Dowd, and Crowley were all off the ground belonging to the United States—to wit, the arsenal property over which the United States has exclusive jurisdiction. It is clear, however, and the evidence is uncontradicted, that Crowley was one of the thieves, and was really the ringleader of a gang of thieves who were engaged in stealing Government property, and that he was so engaged in the commission of such a felony only a few minutes before the shooting; that he fled, as a thief, from the soldier who warned him to halt. The evidence further shows that the felony which Crowley had committed had been committed on the Arsenal property, a place under the exclusive jurisdiction of the United States, and the only court in which Crowley could have been pros-

ecuted for such felony was a court of the United States. It is further evident from a reading of the record that the petitioners, in attempting to make this arrest, acted in absolute good faith, believing that it was their duty to apprehend Crowley and turn him over to the civil authorities of the United States for prosecution. John Dowd, who fired the shot which resulted in the death of Crowley, has been tried by court-martial, consisting of officers of long experience, and was acquitted. That finding was in evidence before the court below. The record shows that there was absolutely no malice, either upon the part of Lieutenant Drury or Private Dowd. It equally appears that both petitioners are of excellent character, and were evidently acting in the honest belief that they were performing a duty imposed upon them by law, a duty that arose suddenly and unexpectedly upon information coming from the outside, and upon which they were compelled to act with precision and dispatch. On the 16th day of December, 1903, a true bill was returned against these petitioners in the Court of Oyer and Terminer and General Jail Delivery for the county of Allegheny, wherein they are charged with the commission of the crime of murder in the first degree and in the second count with the crime of manslaughter. They were thereupon arrested by Edward Lewis, warden of the common jail of Allegheny County, in whose custody they were under a commitment, issued out of the Court of Oyer and Terminer of Allegheny County, based upon the indictment hereinbefore

referred to, at the time they were brought before the court below at the instance of the United States on a writ of habeas corpus and certiorari, with a view to having the legality of their detention inquired into and determined.

On a hearing before the Circuit Court of the United States for the Western District of Pennsylvania, Judge Acheson held, among other things, that, inasmuch as there was a conflict in the evidence, two women having testified that Crowley was shot by Dowd after he had surrendered and while walking toward the soldier for the purpose of giving himself up, it was the duty of the court to discharge the writ and remand the petitioners to the custody of the warden, and it is to review this action of the Circuit Court that this appeal is taken.

SPECIFICATION OF ERRORS.

1. The Circuit Court erred in refusing to find the facts in connection with the killing of Crowley by the petitioner Dowd. (Rec., p. 11.)

2. The Circuit Court erred in holding and deciding that it was relieved of the duty of ascertaining and determining the facts in connection with the homicide, simply because the record discloses some conflicting testimony involving an important issue of fact, viz, as to whether Crowley was shot while fleeing to escape arrest, or whether after he had stopped and had turned around and had virtually surrendered to the petitioner Dowd. (Rec., p. 11.)

3. The Circuit Court erred in failing and refusing to find as a fact, from the evidence adduced, that William H. Crowley had committed a felony on the morning of September 10, 1903, by stealing certain property *belonging* to the *Government* from the *Allegheny* Arsenal, a place under the exclusive jurisdiction of the United States. (Rec., pp. 10, 11, 12.)

4. The Circuit Court erred in failing and refusing to find as a fact from the evidence that at the time of the commission of the homicide the petitioners were engaged in a lawful attempt to arrest and apprehend the said William H. Crowley for and on account of the felony which he had just committed, for the purpose of turning him over to the civil authorities of the United States for prosecution. (Opinion of Court, Rec., pp. 9, 10, 11, 12, 13.)

5. The Circuit Court erred in failing and refusing to find as a fact from the evidence that when the petitioners attempted to arrest the said William H. Crowley for the felony which he had just committed he fled for the purpose of avoiding such arrest, and that it was the duty of said petitioners under the laws of the United States to pursue and arrest the said Crowley for the felony which he had previously committed. (Rec., pp. 9 to 13.)

6. The Circuit Court erred in failing and refusing to find as a fact from the evidence that the petitioner John Dowd was justified in firing upon the said William H. Crowley for the purpose of effecting his arrest and that it was apparent that the said Crowley would have

escaped unless some such extreme measures were resorted to in order to effect his arrest. (Rec., pp. 9 to 13.)

7. The Circuit Court erred in failing and refusing to find as a fact from the evidence that the petitioners in attempting to arrest Crowley for the felony which he had just committed, were engaged in performing a duty imposed upon them and each of them by the Constitution and laws of the United States (Rec., pp. 9 to 13.)

8. The Circuit Court erred in refusing to hold and decide, from the evidence submitted, that the Allegheny Arsenal at the time of the commission of the homicide was a place under the exclusive jurisdiction of the United States, and that the courts of the United States have exclusive jurisdiction over the crimes and offenses committed thereon. (Rec., pp. 9 to 13.)

9. The Circuit Court erred in refusing to hold and to decide upon the facts established by the evidence that the killing of Crowley by the petitioner Dowd, in order to prevent his escape from arrest, was a justifiable homicide. (Rec., pp. 9 to 13.)

10. The Circuit Court erred in refusing to hold and to decide upon the evidence produced that the Court of Oyer and Terminer of Allegheny County, Pa., did not have jurisdiction to try the petitioners, or either of them, upon the charge of murder and manslaughter under the laws of the State of Pennsylvania. (Rec., pp. 9 to 13.)

11. The Circuit Court erred in refusing to hold and to decide under the pleadings and the testimony submitted

that the petitioners and each of them were unlawfully and illegally in the custody of Edward Lewis, warden of the common jail of Allegheny County, Pa. (Rec., pp. 9 to 13.)

12. The Circuit Court erred in refusing to hold and to decide that the petitioners and each of them were entitled to a decree discharging them and each of them from the custody of the warden of the common jail of Allegheny County, Pa. (Rec., pp. 9 to 13.)

13. The Circuit Court erred in refusing to discharge the petitioners. (Rec., pp. 9 to 13.)

POINTS, AUTHORITIES, AND ARGUMENT.

This writ of habeas corpus was issued under and pursuant to the provisions contained in section 753 of the Revised Statutes of the United States, upon the ground that the petitioners "are restrained of their liberty contrary to the Constitution and laws of the United States, and are in custody of the warden of the Allegheny County Jail for *an act or acts done by them in pursuance of the laws of the United States, and while engaged in good faith in the performance of their duty and within the scope of their authority.*" (Rec., p. 5.)

Section 761 of the Revised Statutes provides that "the court or justice or judge shall proceed in a summary way to *determine the facts of the case* by hearing the testimony and argument and thereupon to dispose of the party as law and justice require." The Circuit Court for the Western District of Pennsylvania on the 8th day of February, 1904, granted the petition for the

writ of habeas corpus, and on the same day issued its writ, directed to Edward Lewis, warden of the common jail of Allegheny County, commanding him to produce the bodies of the petitioners, together with a return of the date and cause of their detention. The return to the writ was made on the 8th day of February, 1904. (Rec., p. 7.) The return shows that the petitioners were held in custody in pursuance of a writ of commitment issued out of the Court of Oyer and Terminer of Allegheny County, Pa., based on an indictment found at the December sessions, 1903, of said court, charging the petitioners in the first count thereof of murder, and in the second count of manslaughter. The Circuit Court for the Western District of Pennsylvania thereafter, to wit, on the 22d day of February, 1904, proceeded in a summary manner to hear the testimony and argument, but, as the Government contends, failed and neglected to obey the plain and specific mandate of the statute "to determine the facts of the case * * * and thereupon to dispose of the parties as law and justice require."

The Circuit Court, in the opinion which it rendered in this case (Rec., pp. 9–13), seeks to avoid this responsibility by pointing out that there was some conflicting testimony as to whether the deceased was shot by the petitioner Dowd while fleeing to escape arrest or after he had surrendered. The court said:

> It is very clear that on a habeas corpus hearing such as this it is not competent for the court to determine upon conflicting evidence

> whether the person under indictment in the State court is guilty or innocent of the offense of which he is accused. (*Ex parte Crouch*, 112 U. S., 178, 180.)
>
> Whether the shooting of Crowley was justifiable or excusable must be determined by the State court to whose jurisdiction the petitioners are subjected. That the petitioners will be protected by that court in all their legal rights is not to be doubted.

We submit that the learned Circuit Judge failed utterly to distinguish between the case which this court had under consideration in *Ex parte Crouch* and a case which belongs to that class of cases of which *In re Neagle* is perhaps the most typical example. In *Ex parte Crouch* it was admitted that the petitioner was in the custody of a State court *of competent jurisdiction*, and held for trial upon an information for violating a criminal statute of the State. Mr. Chief Justice White, in delivering the opinion of the court, said:

> He seeks to be discharged by habeas corpus, not because, if guilty of the charge which has been made against him, the court is without jurisdiction to hold him for trial and to convict and sentence him, but because, as he alleges, he has a valid defense to the charge, which grows out of a provision in the Constitution of the United States, and, for this reason, he insists he is detained in violation of the Constitution.

In the case at bar the Government makes the claim, as was made in the case of *In re Neagle, that the State*

court is absolutely without jurisdiction to try the petitioners for the killing of Crowley, for the reason that the homicide was committed by the petitioners while in the lawful performance of a duty and obligation imposed upon them by the Constitution and laws of the United States.

The determination of the facts in the case at bar is necessary in order to ascertain whether or not the State court has jurisdiction to try the petitioners upon the charges preferred, while in the Crouch case the determination of the facts did not go to the question *of the jurisdiction of the court*, but simply to the question as to whether *the defendant had a good and sufficient defense*.

The Circuit Court for the Western District of Pennsylvania in hearing and deciding this case had one of two courses open for its decision.

First. The court might have determined from the facts in the case that the petitioners were engaged in performing an act in pursuance of a law of the United States, and that the homicide was justifiable, in which event the petitioners would have been entitled to be discharged for the reason that the State court was without jurisdiction to place them upon trial.

Second. The court might have decided from the facts in the case that the petitioners were not engaged in performing an act in pursuance of a law of the United States, from which it would follow that the petitioners should be remanded to the custody of the State authorities.

The Circuit Court, however, refused to take either

of these positions, each of which would have necessarily involved a determination of the facts, and held that it was incompetent for him to pass upon the facts, because there was a conflict in the testimony. The court's refusal, therefore, to determine the facts is equivalent to its having determined them adversely to the contention of the petitioners, and this appeal is taken for the purpose of having the court's action or the legal effect of its action reviewed by this court.

I.

United States officers and other persons held in custody by State authority for doing acts which they are authorized or required to do by the Constitution and laws of the United States are entitled to be released from such custody, and the writ of habeas corpus is the appropriate remedy for that purpose.

The Government contends that the facts in the case at bar are abundant to show that it falls properly within that class of cases in which the Federal courts will interfere to release officers of the United States and other persons from the custody of the State authorities when the alleged crimes for which they were arrested were necessarily committed in the performance of some duty or obligation imposed upon them by the Constitution or laws of the United States. It has been held repeatedly by this court that in such exceptional or extraordinary cases the person deprived of his liberty should not be required or compelled to stand a trial in the State court, and, if defeated, carry his case to the Supreme Court of the State and thence

by writ of error to the Supreme Court of the United States, but that the Federal courts will interfere *in limine* "by means of the writ of habeas corpus and in ascertain and determine the facts as to whether the officer was at the time of the commission of the offense complained of engaged in the performance of a governmental duty; and if found to be so engaged will discharge the prisoner, even though it may result in his receiving no punishment at all at the hands of the United States. (*In re Neagle*, 135 U. S., 1; *In re Waite*, 81 Fed. Rep., 359; *Ohio* v. *Thomas*, 173 U. S., 276.) It must be conceded, therefore, that the petitioners are well within their legal right in appealing to the Federal courts to be relieved from the prosecution for murder or manslaughter by the Commonwealth of Pennsylvania.

II.

The petitioners upon this appeal are entitled to have this Court examine the evidence and determine the facts in this case, and to decide whether or not these petitioners are entitled to be discharged from the custody of the warden.

In the recent case of *Storti* v. *Massachusetts* (183 U. S., 138, 143), Mr. Justice Brewer, in delivering the opinion of the court, had the following to say with reference to the duty of this court to determine the facts in a habeas corpus case in the exercise of its appellate jurisdiction:

> We do not question that rule as applied to ordinary suits and actions, but section 761, Revised Statutes, provides as to habeas corpus

cases that "the court, or justice, or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require." That mandate is applicable to this court, whether it is exercising its original or appellate jurisdiction. Proceedings in habeas corpus are to be disposed of in a summary way. The interests of both the public and the petitioner require promptness; that if he is unlawfully restrained of his liberty it may be given to him as speedily as possible; that if not, all having anything to do with his restraint be advised thereof, and the mind of the public be put at rest, and also that if further action is to be taken in the matter it may be taken without delay. Especially is this true when the habeas corpus proceedings are had in the courts of a jurisdiction different from that in pursuance of whose mandate he is detained. This matter of promptness is not peculiar to these cases in Federal courts, but is the general rule which obtains wherever the common law is in force. It is one of those things which give to such proceedings their special value, and is enforced by statutory provisions, both State and Federal. The command of the section is "to dispose of the party as law and justice require.". All the freedom of equity procedure is thus prescribed; and substantial justice, promptly administered, is ever the rule in habeas corpus.

Mr. Justice Miller, in delivering the opinion of the court in *In re Neagle* (*supra*), after referring to section 761 of the Revised Statutes (p. 42), which declares

that the court shall proceed in a summary way to "determine the facts in the case" by hearing the testimony and argument, and thereupon to dispose of the party as law and justice require, said:

> It will be observed that in both the provisions of the Revised Statutes and of this latter act of Congress the mode of review, whether by the Circuit Court of the judgment of an inferior court or justice or judge or by this court of the judgment of a Circuit Court, the word "appeal," and not "writ of error," is used, and as Congress has always used these words with a clear understanding of what is meant by them, namely, that by a writ of error only questions of law are brought up for review, as in actions at common law, while by an appeal, except when specially provided otherwise, the entire case on both law and facts is to be reconsidered, there seems to be little doubt that, so far as it is essential to a proper decision of this case, the appeal requires us to examine into the evidence brought to sustain or defeat the right of the petitioner to his discharge.

It is unnecessary to cite further authority upon this proposition. The failure of the Circuit Court to find as a fact that Crowley had committed a felony and was killed while attempting to avoid a lawful arrest by the petitioner, Dowd, can not be urged as a reason why this court, in the exercise of its appellate jurisdiction, should not consider the evidence *de novo* and ascertain and determine therefrom whether or not the petitioners are entitled to a discharge.

III.

Only a few minutes before his death, William H. Crowley, the deceased, had committed a felony within the Arsenal grounds, a place under the exclusive jurisdiction of the United States, over which crime and the place where it was committed the courts of the United States had exclusive jurisdiction.

(*a*) *The felony which Crowley had committed.*

It appears from the uncontradicted evidence that some time during the night preceding the day on which Crowley was killed he went upon the roof of one of the Arsenal buildings, commonly described as the "L" of the smith shop, situated toward the Allegheny Valley Railroad, and ripped up and removed certain copper plates, which were left by Crowley at some point within the Arsenal grounds, to be brought forth and disposed of when the opportunity should be presented. Sometime after 9 o'clock on the morning of the 10th of September, 1903, Crowley informed one of his companions, Jerry McKenna by name, that on the night previous he had stolen off the Arsenal roof some copper, and requested another companion, Benny Kountz by name, to go and get the ragman, while he and McKenna would go after the copper. McKenna and Crowley thereupon went upon the Arsenal grounds and took the copper, which was the property of the United States, and threw it over the wall, and a few minutes thereafter sold it to the peddler for $3 or $4, Crowley receiving the money realized on the sale of the copper. It was while Crowley was upon the Arsenal wall engaged in the act of carrying away this copper from the Arsenal grounds that he

was seen by a witness of the Government, and an employee in a mill across the street, who immediately telephoned to the officers in charge of the Arsenal that some men were engaged in stealing copper from the Arsenal building. The contention of the Government is that the act of Crowley and McKenna in carrying away this copper, which had been severed and disconnected for several hours from the Arsenal building, constituted the crime of larceny, for which Crowley and McKenna could have been indicted and prosecuted on the charge of a felony in the United States District Court for the Western District of Pennsylvania. Section 5439 of the Revised Statutes, as amended by the act of March 3, 1875 (18 Stat., 479), provides in part as follows:

> Embezzlement or larceny of public property:
>
> *Be it enacted, &c.*, That any person who shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be deemed guilty of felony, and on conviction thereof before the District or Circuit Court of the United States in the district wherein said offense may have been committed, or into which he shall carry or have in possession of said property so embezzled, stolen, or purloined, shall be punished therefor by imprisonment at hard labor in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or both, at the discretion of the court before which he shall be convicted.

It is manifest that under the facts as they appear in the record, and the law above referred to, William H. Crowley had committed a felony for which he could be prosecuted only in the courts of the United States, and that by reason of the commission of such crime he became liable to arrest, with or without a warrant, by an officer of the United States, or by a private person who knew that such felony had been committed and had reasonable grounds to believe that Crowley had committed the same. The rule at common law is that things which are annexed to the freehold of land, or are growing thereon, such as fixtures of all kinds, minerals, trees, corn, fruit, and other crops, are regarded as a part of the realty, and, by a very refined technicality, it was held at common law that it was not larceny to sever and carry them away, if the severance and the asportation were not separated by any interval of time. (1 Hale, P. C., 510; *United States* v. *Wagner*, 1 Cranch (C. C.), 314; *United States* v. *Smith*, 1 Cranch (C. C.), 475; *People* v. *Williams*, 35 Cal., 671; *State* v. *Davis*, 22 La. Ann., 77.) But if the thing was severed by the defendant and an interval of time occurred between that act and the carrying away, so that they were separate and independent acts, the subsequent carrying away *animo furandi* was held to be larceny, because by the severance the thing became personalty, and, as such, was in the possession of the owner of the land. (*Reg.* v. *Foley*, 26 L. R. Ir., 299, 17 Cox C. C., 142; *Beall* v. *State*, 68 Ga., 820; *Bell* v. *State*, 4 Baxt. (Tenn.), 426.)

It has been said that a day must intervene between the severance and the asportation to make them separate acts, for the reason that the law does not recognize fractions of a day; but the better rule seems to be that no particular space of time is necessary, the only requirement being that the two acts must be so separated as not to constitute one transaction. (*Holly* v. *State*, 54 Ala., 238; *John's case*, 3 City Hall Rec. (N. Y.), 58; *Bradford* v. *State*, 6 Lea (Tenn.), 634; *Ex p. Willkie*, 34 Tex., 155; *Com.* v. *Steimling*, 156 Pa. St., 400.)

While we are satisfied to rest our case upon the proposition that William H. Crowley had committed a felony within the meaning of the act of March 3, 1875, above referred to, and was therefore liable to arrest by the petitioners, it may not be inappropriate to direct the attention of the court to other provisions of law which certainly apply to this case if for any reason the act of March 3, 1875, should be considered inapplicable.

Section 5391 of the Revised Statutes makes provision for the punishment of offenses committed in any place which has been or may hereafter be ceded to and under the jurisdiction of the United States, and directs that the laws of the State in which the place is situated which were in existence at the time the United States acquired jurisdiction shall be applicable. Section 5391 of the Revised Statutes provides as follows:

> If any offense be committed in any place which has been or may hereafter be, ceded to and under the jurisdiction of the United States,

> which offense is not prohibited, or the punishment thereof is not specially provided for, by any law of the United States, such offense shall be liable to, and receive, the same punishment as the laws of the State in which such place is situated, now in force, provide for the like offense when committed within the jurisdiction of such State; and no subsequent repeal of any such State law shall affect any prosecution for such offense in any court of the United States.

It will be observed that this section applies only to such offenses as are not prohibited or the punishment thereof is not specifically provided for by any law of the United States, from which it follows that if the provisions of the act of March 3, 1875, relative to the larceny of Government property does not apply to the crime which Crowley had committed in the Allegheny Arsenal property, this section, namely, 5391, does apply if there existed a law of the State of Pennsylvania making Crowley's act a felony at the time this arsenal property was acquired by the United States.

By section 1 of an act of the Pennsylvania legislature approved March 9, 1816, the Commonwealth of Pennsylvania consented to the purchase by the United States of a tract of land upon which the Allegheny Arsenal is situated as and for a military reservation; and it provided that nothing that said act contained should be construed so as to impede or prevent the execution of any process civil or criminal under the authority of the State. The act of 1816 was amended by the act of February 14, 1845, by which the Com-

monwealth of Pennsylvania consented to the purchase and acquisition by the United States of certain other real property as an addition to the Allegheny Arsenal grounds formerly acquired by the United States; and by section 2 of the act of 1845 it was provided that there should vest in the United States jurisdiction over the same and to the same extent as it had vested by the act of 1816.

By these acts of the legislature of Pennsylvania the United States acquired exclusive jurisdiction over the Allegheny Arsenal grounds, so far as the prosecution of all crimes and offenses which might thereafter be committed within such military reservation was concerned. It is true that the State of Pennsylvania by these acts of the legislature reserved concurrent jurisdiction for the purpose of serving State civil and criminal process, but such reservation in no manner interfered with the exclusive jurisdiction of the United States so far as the prosecution of crimes committed within the boundaries of the Arsenal grounds was concerned.

> In the cession to the United States by a State of land for military posts the reservation of concurrent jurisdiction to serve State civil and criminal process in the ceded place does not defeat the jurisdiction of the United States over the ceded place, and the State courts have no jurisdiction over crimes committed therein. (*United States* v. *Cornell*, 2 Mason, 65.)

Section 5391 of the Revised Statutes was enacted on April 5, 1866, at which time the Allegheny Arsenal

property had been ceded to and was under the exclusive jurisdiction of the United States. At the same time, to wit, April 5, 1866, there existed a law of the State of Pennsylvania, which Congress adopted and made a law of the United States, by the act of 1866, above referred to, which precisely covered the crime which Crowley had committed and under which he might have been prosecuted, tried, and convicted in the District Court of the United States for the Western District of Pennsylvania. That law is as follows:

> If any person shall steal or rip, cut or break, with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively, fixed in or to any building whatsoever, or anything made of metal, fixed in any land, being private property, or for a fence to any dwelling house, garden, or area, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be deemed guilty of larceny, and, being thereof convicted, shall be sentenced to pay a fine not exceeding five hundred dollars and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years. (Purdon's Digest, vol. 1, p. 515, 12th edition.)

It will be observed that this law of the State of Pennsylvania, which Congress adopted by the act of 1866 and made applicable to the Allegheny Arsenal grounds, as well as all other places under the exclusive

jurisdiction of the United States, provided that the offender should be deemed guilty of larceny; and by section 148 of the Pennsylvania criminal code it was declared that if any person shall be guilty of larceny he shall, on conviction, be deemed guilty of a *felony*.

It is therefore immaterial, so far as the commission of the felony is concerned, whether we consider Crowley's act committed the night before, which consisted in ripping up and removing the copper sheeting and plates upon the roof of the blacksmith shop, or whether we consider his act committed on the morning of the 10th of September, 1903, which consisted in stealing and carrying away from the Arsenal grounds the bundles of copper sheeting, the property of the United States, which he had previously severed and detached from the roof of the Arsenal building. In committing either of these acts he was guilty of a felony under the laws of the United States, for which he could alone be prosecuted and convicted in a court of the United States. In either case the Government contends that it was the duty of the petitioners to arrest Crowley for the commission of such felony, and to surrender him to the civil authorities of the United States for prosecution. The petitioners had the legal right to arrest Crowley, which we will now consider, as well as the manner in which they attempted to make such arrest.

IV.

The arrest.

(*a*) *Prior depredations.*

The record discloses that prior to the 10th day of September, 1903, many depredations of a similar character had been committed by persons unknown upon the Arsenal grounds and buildings at the Allegheny Arsenal, of which Lieutenant Drury had charge and control as an officer of the United States Army. These depredations had been so numerous and so flagrant as to be brought to the attention of Maj. E. B. Robertson, commanding officer of Fort Niagara, N. Y., of which latter place the Allegheny Arsenal was at that time a subpost. When Major Robertson visited the Allegheny Arsenal, in January, 1903, Lieutenant Drury pointed out to him the condition of the various buildings at the Allegheny Arsenal and specifically called his attention to the fact that certain parts of these buildings had been removed, including downspoutings, eaves troughs, etc. In the month of July, 1903, Major Robertson again visited the Allegheny Arsenal and, finding that these depredations were still being committed, directed Lieutenant Drury to establish a patrol of the guard, and gave instructions to him to send the sentinel of the guard on this patrol, and, if possible, to apprehend and arrest any person or persons committing depredations on the Arsenal property, and to use any force that should be necessary in order to keep and preserve the public property in his charge.

(Record, pp. 53, 54, and 55.) This is important for the purpose of showing that the commission of crimes similar to the one which Crowley committed on the 10th of September, 1903, were known to the officers and men in charge of the Allegheny Arsenal property, and that their superior officers had imposed upon them the specific duty of arresting all persons who might be engaged in the commission of such depredations.

(*b*) *In the absence of any specific law upon the subject, the petitioners were charged with the duty of arresting persons guilty of stealing Government property under their custody.*

In the case of In re Neagle (135 U. S., 1), this court repudiated the contention asserted by the minority that an officer of the United States could not justify an act performed by him as having been performed in pursuance of a law of the United States, unless he was able to point out some specific law authorizing him to perform the act drawn in question. In the Neagle case it was admitted that there was no specific law of the United States which imposed upon Neagle the duty of protecting Justice Field from assault and possibly from assassination, but this court held that such a duty did rest upon the deputy marshal, and was properly inferrible from the Constitution and the laws of the United States. Mr. Justice Miller said:

> In the view we take of the Constitution of the United States, any obligation fairly and

> properly inferrible from that instrument, or any duty of the marshal to be derived from the general scope of his duties under the laws of the United States, is "a law" within the meaning of this phrase. It would be a great reproach to the system of government of the United States, declared to be within its sphere sovereign and supreme, if there is to be found within the domain of its powers no means of protecting the judges, in the conscientious and faithful discharge of their duties, from the malice and hatred of those upon whom their judgments may operate unfavorably.

We therefore assert that, even in the absence of any specific law imposing the duty and obligation upon the petitioners to arrest persons guilty of stealing property of the Government from the Allegheny Arsenal, such duty nevertheless was imposed upon them by the Constitution and laws of the United States just as effectively as though there existed a specific law of Congress authorizing and requiring them to make arrests in such cases.

(c) *At the time of the commission of the homicide there existed a specific law of the United States under which these petitioners were acting in making the arrest of Wm. H. Crowley.*

The regulations for the United States Army, published by direction of the President of the United States, on the 1st day of May, 1901, contains the following provision with reference to the arrest by the

troops of persons caught in the act of stealing public property:

> SEC. 771. Upon satisfactory information that such United States property, unlawfully in the possession of any parties, is likely to be taken away, concealed, or otherwise disposed of before the necessary proceedings can be had in the civil tribunals for its recovery, the post or detachment commander will at once cause the same to be seized, and will hold it subject to any legal proceedings that may be instituted by other parties. *Persons caught in the act of stealing public property will be summarily arrested by the troops and turned over to the civil authorities for trial.* (Army Regulations, p. 107.)

As to the responsibility of officers of the Army in permanent or temporary command of a post or station for the security of all public property in their custody or under their control, the court is referred to sections 739, 740, 764, and 766 of the Army Regulations for 1901.

The specific authority for such regulations, if such authority be found to be necessary, will be found in section 161 of the Revised Statutes, which provides as follows:

> The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The question may be asked as to what effect section 771 of the Army Regulations has upon ascertaining what is the duty of troops of the United States with reference to arresting persons caught stealing Government property. It has been held frequently that such regulations lawfully prescribed by one of the executive departments of the Government has the force and effect of law. As was said by Judge Thayer in delivering the opinion of the court in the case of *Campbell* v. *Waite* (88 Fed. Rep., 102, 106):

> It was also decided *in re Neagle* (135 U. S., 1, 75, 10 Sup. Ct., 658), where most of the foregoing cases were cited and approved, that no act done in pursuance of a law of the United States lawfully enacted can be an offense against the laws of a State, and that an act done in obedience to rules or regulations lawfully prescribed by one of the executive departments of the Government, or in obedience to the directions of one of the heads of such departments, acting within the scope of his authority, is to be regarded as an act done in pursuance of a law of the United States, although no statute of the United States has in express terms directed the doing of the act.

(*d*) *If the laws of the United States imposed upon these petitioners the duty to arrest Crowley for the felony which he had committed, they were justified in making use of whatever force was necessary for the purpose of performing such duty, even to the extent of firing upon Crowley, if in no other way he could be apprehended.*

At common law and under the decisions of the courts of the United States there seems to be a well-recognized distinction between the powers and duties of peace officers in making arrests without a warrant and the powers of individual citizens to make such arrests. This distinction seems to rest upon the fact that, in certain cases at least, the private person is simply *permitted* by the law in making arrests, while in the case of a peace officer the duty of making the arrest is enjoined upon him.

We take the position that the petitioners in arresting Crowley were performing a duty enjoined upon them as officers of the United States, and that the law applicable to arrests made by officers without a warrant is applicable to and protects these petitioners just as effectively as though they had been peace officers or deputy marshals of the United States.

The petitioners at the time of making this arrest were in uniform and armed under the authority of the United States, not only for the purpose of protecting Government property in their custody and control, but specifically charged with the duty of arresting all persons caught in the act of stealing such property; from which it follows that the duty rested upon them to pursue

and arrest the felon upon reasonable grounds for belief that Crowley had committed the offense, which he had in fact committed and which was known to the petitioners.

It is only fair and proper to assume that these petitioners had knowledge of the law applicable to their rights and duties with respect to the arrest of felons who had stolen Government property under their custody and control. The proposition of law for which we are here contending finds support in the common law in the works of all the authors and text-book writers upon the subject and in the decisions of courts, both State and Federal.

1. THE COMMON LAW RULE.

Sir William Blackstone, in discussing the rights of peace officers to arrest without a warrant, says:

> And in case of felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may, upon probable suspicion, arrest the felon, and for that purpose is authorized to break open doors and even to kill the felon if he can not otherwise be taken; and if he or his assistants be killed in attempting such arrest it is murder in all concerned.—(IV Blackstone, p. 292.)
>
> See also II Hale, P. C., pp. 88, 89.

Sir Michael Foster, whom Blackstone has styled as a very great master of the Crown law, in his work entitled Foster's Crown Cases, page 271, says:

> What hath been said with regard to bare flight in a proceeding merely civil is equally

true in the case of a breach of the peace or any other misdemeanor short of felony. But where a felony is committed and the felon fleeth from justice, or a dangerous wound is given, it is the duty of every man to use his best endeavors for preventing an escape; and if in the pursuit the party fleeing is killed, where he can not be otherwise overtaken, this will be deemed justifiable homicide, for the pursuit was not barely warrantable, it is what the law requireth and will punish the willful neglect of. I may add that it is the duty of every man in these cases quietly to yield himself up to the justice of his country, and for this reason it is that flight alone upon a charge of felony induceth a forfeiture of goods, though the party upon his trial may be acquitted of the fact, for he hath done what in him lay to stop the course of public justice.

The following cases upon examination will be found to bear a very close analogy to the facts of the case at bar, and in which the proposition of law here contended for is distinctly recognized:

Rex v. *Geo. Howarth.* Moody's Crown Cases, Vol. III, p. 207.

The Queen v. *Dadson.* Denison's Crown Cases, Vol. II, p. 35.

Regina v. *Murphy.* Crawford & Dix's Circuit Cases, Vol. III, p. 20.

See also

I East's Pleas of the Crown, p. 298.

I Hale, p. 481.

Rex v. *Finnerty.* I Crawf. & Dix C. C., p. 167.

I Hawkin's, p. 881.

I Russ. Crimes, p. 666.

Mr. Wharton, in his work on criminal law, Vol. III, section 2928, gives a very clear explanation of the decision of the court in *The Queen* v. *Dadson* (*supra*). He says:

> Thus in a remarkable English case, a constable was held not to be justified in shooting at a man whom he had seen stealing wood growing in a copse (which is, when a first offense, only a misdemeanor, though for a second offense, after a conviction, a felony), although the constable had no means of arresting the culprit without firing, and although the latter had been previously convicted of the same offense, the constable not being aware of such prior conviction. The question here was whether the constable had to his own mind probable cause; and as he had not, the attempt to arrest without warrant was held illegal.

In the case at bar, however, the soldier Dowd knew that the stealing of Government property was a felony, and had been informed by his superior officer, Lieutenant Drury, when they left the Arsenal grounds, that some persons were then engaged in stealing Government property from the roof of the Arsenal buildings. When he reached the place where the felony was alleged to have been committed, he saw these young men, and when they saw him they fled, and upon being called upon four times to halt, Crowley still continued his flight, from which we submit that the petitioner, Dowd, had reasonable grounds to believe that he had committed a felony, as was the fact.

2. THE OPINIONS OF AUTHORS UPON CRIMINAL LAW.

Sheriffs, constables, officers of the police are not only authorized to arrest public offenders without warrant, but are required to do so if there be reasonable ground for suspicion. For all offenses committed in the presence of an officer this power is claimed, though for past offenses the power is limited to cases of felony and breaches of the peace. In the latter cases, however, it is the duty of the officer to begin at once the pursuit of the person charged with the offense, provided, only, that there be reasonable ground of suspicion. (Wharton on Criminal Law, Vol. III, section 2927.)

If a man is committing a felony and an officer, for instance, attempts to arrest him, yet he runs away, and the officer calls on him to stop, then, if he will not stop, the officer is justified in shooting at him to compel him to stop; but, if the offense is a misdemeanor, he has no right to take this extreme measure. (Bishop's Criminal Procedure, Vol. I, section 159. See also Bishop's New Criminal Law, Vol. II, section 648.)

3. THE DECISION OF THE COURTS.

In all cases where this question has come clearly before the courts for adjudication, the principal of law has been recognized that in those cases in which a felony has in fact been committed, although not in the presence of the officer, and the officer has reasonable grounds to believe a certain person to have committed the felony, the peace officer has resting upon him

the obligation to arrest the suspected party even without a warrant, and that if he flees from such arrest the officer would be justified in firing upon him if the felon could not be apprehended without resorting to such extreme measures.

Conraddy v. The People. 5 Parker (N. Y.), 234, 241.

The plaintiff in error was indicted for the murder of Paul O'Neil, and was convicted for manslaughter in the fourth degree and sentenced to imprisonment for one year in the penitentiary of Kings County, N. Y. The plaintiff in error was a police officer, who had arrested the deceased without a warrant and shot at him and killed him at the time he was escaping from his custody. The Supreme Court of the State of New York, in affirming the conviction, said that there was no evidence of a commission of a felony, and in course of the opinion announced the rule of law in cases of homicide committed in making arrests for felony, as follows:

> The prisoner, although an officer, was acting without a warrant. No warrant had been issued by or to any one against the deceased. Nor had he committed any offense in the view or presence of the officer. Under such circumstances, to justify taking life, even if the jury were satisfied of the necessity of the homicide to prevent an escape, it must be shown that a felony had actually been committed. The distinction is marked between cases of misdemeanor and of felony. It is only in the latter that a homicide is justifiable by any person

> acting without a warrant, even when it is the only means to prevent the escape of the criminal. When no warrant is out for the offender, even an officer can not take his life to prevent his escape upon his own belief of the commission of a felony, however reasonable ground he may have for such belief. If he act without a warrant, he must be prepared to show the fact of the felony, in order to justify taking the life of a person whom he is endeavoring to arrest or to secure.

Commonwealth v. Long. 17 Pennsylvania Superior Court Reports, p. 641, 647.

This case was decided by the Superior Court of Pennsylvania in 1901. The defendant, on the night of February 11, 1900, being a tenant farmer residing in North Cornwell Township, shot and killed one John Becker, a burglar, while the latter was escaping from the defendant's house. The Superior Court reversed the judgment of conviction, and in the course of the opinion took occasion to lay down the law of the State of Pennsylvania, which was held to be simply declaratory of the common law, relative to the right of an officer or a private citizen to arrest a fleeing felon. The court said:

> One who is seen to commit a felony must be arrested on the spot or suffered to escape. So, though not seen, yet if known to have committed felony, and thereupon pursued, he may be arrested, with or without warrant, by any person. These are principles of common law

essential to the welfare of society, and not altered or impaired by the constitution. (6 Binney, 318; *Wakely* v. *Hart*, 6 Binney, 316.) When a party may be lawfully arrested for felony, and he knowing the cause, flies, so that he can not be taken otherwise than by killing him, the constable pursuing him will be justified in killing him; or a private person will, in like manner, be justified if he can prove that the deceased was actually guilty of a felony. (1 Archbold's Pr. & Pl., 29; 2 Am. & Eng. Ency. of Law (2d ed.), 884, and cases there cited.)

On the commission of a felony, a private person making fresh pursuit on reliable information may arrest the felon. It is the law not only of England, but of this State, any private person that is present when a felony is committed is bound by the law to arrest the felon on pain of fine and imprisonment if he escape through the negligence of the standersby, and they may justify the breaking open the doors upon following such felon; and if they may kill him, provided he can not be otherwise taken, it is justifiable, though if they be killed in endeavoring to make such arrest, it is murder. (*Brooks* v. *Commonwealth*, 61 Pa., 352.)

There seems to be a striking analogy between the case at bar and the case of *Commonwealth* v. *Long*. David S. Long, at the time of the homicide, did not know as a positive fact that Becker had in fact committed a felony. He had, however, reasonable grounds for the belief that the person whom he saw fleeing had committed a felony in his house, and it

afterwards turned out that such a felony had in fact been committed by Becker. Long, without even calling upon Becker to halt, fired upon him and killed him. Nor does it appear from Long's testimony that he was attempting to arrest him for a felony. Long stated in his testimony: "I shot to stop him because he was in my house; I shot to stop him, to mark him, to find out who he was; I thought he was a robber and went through my house; so I could find out who he was; I could not give him notice so as to stop him, he would have gotten behind the house and behind the trees a few feet distant from the house; he was going from me on a dead run." So, in the case at bar, the petitioner Dowd, at the time of the homicide, did not know positively that Crowley had committed a felony. He had been informed by Lieutenant Drury that some persons were engaged in stealing copper from the Arsenal buildings. He suddenly came upon Crowley, and the other young men who were with him, near the Arsenal wall, in the immediate vicinity of the place where he had been informed that the stealing was going on. These young men fled immediately upon seeing the soldier. They were conscious of their guilt and knew that the soldier was going to arrest them. The petitioner Dowd called upon Crowley four times to halt, which he refused to do, and only fired upon him when it was apparent that he could not otherwise have been apprehended.

Such was the law of the State of Pennsylvania at the time of the commission of this homicide, and such

is the law as declared by the courts of the States generally where the question has been up for judicial determination. We therefore submit that the petitioner Dowd was justified, under all the facts and circumstances of the case, in firing upon the felon Crowley for the purpose of effecting his arrest, and that the court of Oyer and Terminer of Allegheny County is without jurisdiction to try the petitioners on the indictment which has been found against them in that court.

The following list of authorities will be found to recognize the principles of law applicable to the arrest of felons for which we are here contending:

Brish v. *Carter et al.* 57 Atlantic Reporter, p. 210 (Md.).

State ex rel. Olson v. *Leindecker.* 97 Northwestern, p. 972 (Minn.).

Brooks v. *State.* 39 Southwestern Reporter, p. 877 (Ga.).

People v. *Glennon.* 74 New York Supplement, p. 794.

Kirk & Son v. *Garrett.* 84 Maryland, p. 383.

People v. *Hochstin.* 73 New York Supplement, p. 626.

Stapely v. *Commonwealth.* 6 Binney (Pa.), p. 316.

Brooks v. *Commonwealth.* 61 Pennsylvania, p. 352.

United States v. *Fuellhart.* 106 Federal, p. 911.

V.

The decision of the Circuit Court.

The Circuit Court for the Western District of Pennsylvania, in addition to the error which it committed in refusing to pass upon the conflicting evidence, thereby denying the petitioners the rights to which they were entitled under section 761 of the Revised Statutes, entirely misconceived the purpose of the provisions contained in the Fifty-ninth Article of War. That article provides as follows:

> When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment to which the person so accused belongs, are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.

The Circuit Court held this article of war to be a distinct recognition by Congress of the general jurisdiction in time of peace of the civil courts of a State

over persons in the military service of the United States who are accused of a capital crime or of any offense against the person of a citizen committed within the State, citing *Coleman* v. *Tenn.* (97 U. S., 509, 514). This proposition has never been questioned, so far as we know, but we are unable to see what possible application it can have to cases similar in character to the case at bar. Had Lieutenant Drury and Private Dowd committed the crime of manslaughter, or any other crime against the laws of the State of Pennsylvania, while outside the military reservation and at a time when they were not engaged in performing a duty imposed upon them by a law of the United States, they would clearly be amenable to prosecution at the hands of the civil authorities of the State of Pennsylvania, and under the Fifty-ninth Article of War they would have been surrendered to the State authorities for prosecution. It is quite apparent that the learned judge who heard this case in the court below failed to recognize this obvious distinction. The Fifty-ninth Article of War never contemplated that an officer of the United States who performed an act while engaged in the prosecution of an official duty imposed upon him by a law of the United States should ever be called to account in a State court to answer to a State tribunal for the manner in which he had performed such duty. The Fifty-ninth Article of War was, therefore, never intended to cover such a case as the one which was presented to the court below for consideration, and it seems to us

to be very clear that the court below fell into grievous error in failing to distinguish those exceptional cases, of which the case at bar is a typical example, wherein the State courts are without jurisdiction to proceed under the authorities which we have heretofore cited.

VI.

The evidence in the case is conclusive that Crowley was wounded while fleeing from arrest.

All the witnesses who saw the shooting testified that the petitioner Dowd fired upon Crowley while he was fleeing from the soldiers, with the exception of the two witnesses Mrs. Hannah Long and Mrs. Elizabeth Sherm. (Rec., pp. 203–207.) These two women testified positively that Crowley had turned around and was facing the soldier Dowd at the time the shot was fired. This evidence is in direct conflict with the evidence of every other witness who saw the shooting, and the testimony of these women in other particulars shows that it is entirely unreliable and untrustworthy. The testimony of the physicians who made the post-mortem examination shows beyond all doubt that the shot was fired while Crowley was fleeing from Dowd. Doctor McFarland, who testified for the Government, in describing the wound said: "The bullet entered at the back and came out in front, just above the crease in the buttock, coming out in the front part of the thigh and that the wound in front was probably 2½ inches lower than in the rear;" and Doctor McFarland further testified that such a wound could not have been

inflicted if the man had been facing the person who fired the shot; and the doctor further testified that Crowley himself told him that he, Crowley, was fleeing from the soldier when he was shot, and that after he was shot he turned and walked toward the man until he sank down upon the ground. (Rec., p. 49.)

Doctor Howarth, a witness called for the United States, testified that the bullet entered the thigh at the fold between the swell of the buttock and the commencement of the thigh proper, and that the exit of the wound was about 3 inches below what is termed Poupart's ligament, corresponding very closely to the fold in the front of the thigh, between the thigh and the commencement of the abdomen; that is, about 3 inches below that line. Doctor Howarth also testified that the wound at the point of entrance had a punched-out appearance, perfectly round, and the tissues seemed to be indriven, whereas at the point of exit there was a larger aperture and torn with the tissues protruding. (Rec., pp. 51–52.)

While it is true that there was conflicting testimony as to whether Crowley was shot while fleeing from the soldier or after he had turned around for the purpose of surrendering and submitting to arrest, it is equally true that when all the evidence in the case is considered there can not exist even a reasonable doubt in the mind of an unprejudiced person that Crowley was shot while fleeing from arrest, and the petitioners were clearly entitled to have the court below so find the fact to be. The Circuit Court therefore erred in refusing

to find what was the fact upon this point and in holding that because there was a conflict of testimony he was relieved of the duty of deciding the case as law and justice require. The court's refusal to determine the fact was the legal equivalent of holding that Crowley was shot by the petitioner Dowd after he had surrendered, and we submit that such a finding is not justified by the evidence, which shows the contrary fact to have been established, viz, that Crowley was wounded while fleeing from the soldier.

As to all the other material questions of fact in this case, the evidence in behalf of the petitioners was substantially uncontradicted. We contend, therefore, that this case must be decided upon the established fact that Crowley met his death while attempting to escape arrest by a soldier of the United States, who was attempting to arrest him for a felony which he had shortly before committed on property under the exclusive jurisdiction of the United States. To these facts must the law of the case be applied, with a view to determining whether the homicide was criminal or justifiable.

VII.

The petitioners contend that even though this court should decide that Dowd used more force in attempting to make the arrest than he was warranted in using under the law, nevertheless since he was engaged in performing a duty imposed upon him by a law of the United States, the State courts of Pennsylvania are without jurisdiction to call him to account for the excessive use of force in performing a duty which the Federal laws commanded.

By this proposition we do not mean to assert that this homicide would have been justifiable had it been committed by the petitioner Dowd after Crowley had submitted to arrest and had surrendered himself into the custody of the soldier. Had the soldier fired upon Crowley under such circumstances the claim that he was engaged in performing a duty imposed upon him by a law of the United States would be unreasonable and without any foundation to support it, for the reason that the arrest would then have been an accomplished fact. Neither do we claim that an officer legally in charge of a prisoner after an arrest has been effected could justify an unreasonable assault upon his prisoner upon the theory that it was committed while he was engaged in performing a duty, viz, maintaining his custody of the prisoner under a law of the United States. Such hypothetical cases are extreme, but serve to illustrate the demarcation between the two classes of cases which we are attempting to differentiate. If a prisoner in charge of a United States marshal should commit acts showing a purpose upon his part to escape, the marshal would unquestionably be justified in using sufficient force to retain his

custody and control of the prisoner; and if he should use greater force than the law would seem to justify in performing such a duty, he certainly could not be called to account in the courts of a State for such excessive use of force. If, on the other hand, without any color or warrant whatsoever for the use of force upon a prisoner in his custody or control, a marshal should assault him or do him great bodily harm, I apprehend that the law is such that the marshal would be amenable to the State courts for such an offense, for this reason, that in such a case it would be palpable that the marshal did not commit the acts complained of in the performance of a duty imposed upon him by a law of the United States, and were he to make such a claim, the Federal court hearing the case would be compelled to decide that such a claim was merely a pretext and of no avail to the protection of the marshal from the prosecution in the State courts.

The remarks of Judge Kane in the case of *Ex parte Jenkins* (2 Wall., Jr., 543), which are quoted with approval by Mr. Justice Miller in the case of *In re Neagle*, seem to have an important bearing upon the proposition here advanced:

> It has been urged that my order, if it shall withdraw the relators from the prosecution pending against them (in the State court), will in effect prevent their trial by jury at all, since there is no act of Congress under which they can be indicted for an abuse of process. It will not be an anomaly, however, if the action of this court shall interfere with the trial of these

> prisoners by a jury. Our constitutions secure that mode of trial as a right to the accused; but they nowhere recognize it as a right of the Government, either State or Federal, still less of an individual prosecutor. The action of a jury is overruled constantly by the granting of new trials after conviction. It is arrested by the entering of *nolle prosequis* while the case is at bar. It is made ineffectual at any time by the discharge on habeas corpus. * * * And there is no harm in this. No one imagines that because a man is accused he must therefore, of course, be tried. Public prosecutions are not devised for the purpose of indemnifying the wrongs of individuals, still less of retaliating them.

In the leading case of *In re Waite* (81 Fed. Rep., 359) decided by Judge Shiras in the Northern District of Iowa in 1897, the precise question which we are here considering was brought to the attention of the court by the attorneys who appeared in behalf of the respondent. Judge Shiras in his decision entered into an exhaustive discussion of the point raised and expressed his views in the following language:

> In effect, the State court undertook to punish the examiner under the provisions of the State statutes for acts done by him as an agent of the United States, the acts being intended to further the duty imposed upon the examiner by the laws of the United States, upon the ground that in doing the acts the examiner exceeded the authority conferred upon him by the laws of the United States. It is not questioned that if a

person who is an officer or agent of the United States commits a felony in a matter aside from that committed to his care as an officer of the United States he may be prosecuted therefor in the State courts, but in such case he is not proceeded against as an officer or agent of the United States. If, however, he is proceeded against for acts done in his official capacity on the theory that what he did was not required in the performance of his duty, but was in excess thereof, then it is clear that the vital question is the extent of the authority conferred upon him by the laws of the United States, and it certainly is the law that the officers and agents of the United States, such as the marshals, the deputy marshals, post-office inspectors, pension examiners, and the like, can not be called to account before the courts of the States for the manner in which they perform the duties intrusted to them. Suppose it were true that the examiner in this case, in his efforts to get at the truth with regard to the Andrus claim, did threaten Andrus that if he did not own up to the fraud charged against him he would be prosecuted for perjury or other crime. What right has the State of Iowa to inquire into the mode or manner in which the United States, through its officers and agents, administers the pension system of the United States? If the examiner, while conducting the investigation into the validity of the claim preferred by Andrus, may have overstepped the limits he should have observed in the examination of Andrus (which, however, I do not assert nor believe), it is for the Government of the

> United States to call him to account, and not for the State of Iowa. It is true that when in the State of Iowa the officers and agents of the United States owe obedience to the laws of the State, but they, in common with all others, owe obedience to such laws only in matters to which the State laws are properly applicable.

Applying this reasoning to the case at bar, we concede that if the petitioner Dowd, who was an officer and agent of the United States, had committed a felony in the performance of some act aside from the performance of his duty as an officer of the United States, he could have been prosecuted therefor in the State courts of Pennsylvania. If, on the other hand, the petitioner Dowd while attempting to arrest the fleeing felon Crowley, as it was his duty to arrest him, under the laws of the United States, and in making such arrest overstepped the limits which he should have observed under the laws of the United States, it is for the Government of the United States to call him to account and not the State of Pennsylvania. The distinction seems to rest upon this proposition: Was the officer in good faith fairly and reasonably endeavoring to perform a duty or obligation imposed upon him by a law of the United States? If he was so engaged, and went beyond the strict line of his legal power and authority in performing such duty, the United States and not the State would have jurisdiction to call him to account. If, on the other hand, an officer of the United States should commit an act which would constitute an offense under the State

laws, and upon being charged with the commission of a crime before the State tribunals, such officer should plead that at the time of the commission of the crime charged he was engaged in performing a duty imposed upon him by a law of the United States, the bare assertion of such fact upon the part of the officer would not be sufficient to protect him from a prosecution at the hands of the State. In such a case the Federal court would be called upon to investigate the facts by means of the writ of habeas corpus, and if it were made to appear that there was not the least color or foundation in fact to support the plea of the officer the Federal court hearing the case would undoubtedly remand the officer to the custody of the State authorities to be by them dealt with according to law.

It is respectfully submitted that the decision of the United States Circuit Court for the Western District of Pennsylvania should be reversed and the said court be directed to enter an order discharging the petitioners and each of them from the custody of the warden of the common jail of Allegheny County.

MILTON D. PURDY,
Assistant to the Attorney-General.

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Supreme Court of the United States.

No 126.—October Term, 1905.

The United States ex rel. Ralph W. Drury and John Dowd, Appellants, *vs.* Edward Lewis, Warden of the Common Jail of Allegheny County, Pennsylvania.	Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

[January 2, 1906.]

Ralph W. Drury and John Dowd were indicted in the Court of Oyer and Terminer for the county of Allegheny, Pennsylvania, on two counts, the first charging them with murder, and the second with manslaughter, in the homicide of one William H. Crowley, September 10, 1903. They were admitted to bail in the sum of $5,000 each, and having been subsequently surrendered, obtained a writ of *habeas corpus* from the Circuit Court of the United States for the Western District of Pennsylvania. The case on the hearing was thus stated by Acheson, J., holding the Circuit Court:

"On September 10th, 1903, Ralph W. Drury was a commissioned officer of the United States Army, of the rank of second lieutenant, and had under his command a detachment of twenty enlisted men, of whom John Dowd was one, stationed at Allegheny Arsenal, in the city of Pittsburgh, in Allegheny County, Pennsylvania, this arsenal being a subpost of Fort Niagara, New York. From time to time before September 10th, 1903, some copper down spouts and eve troughs had been stripped from some of the buildings on the arsenal grounds and the material stolen, and other depredations, such as the breaking of window lights, had been committed on the arsenal property. Lieut. Col. Robertson, the commanding officer at Fort Niagara, on the occasion of an inspection of Allegheny Arsenal, in July, 1903, had directed Lieutenant Drury to use his best endeavors to stop the depredations, and to that end ordered him to establish a patrol of the guards day and night upon the arsenal grounds, and to apprehend and arrest any person or persons committing depredations on the arsenal property. Shortly before 10 o'clock on the morning of September 10th, 1903, having received word that some persons were stealing copper from one of the buildings on the arsenal grounds, Lieutenant Drury took John Dowd, then on guard duty, and another private soldier (each of the latter being armed with a rifle and ammunition), and, passing out of the arsenal grounds through the gate on Butler street, the three proceeded by way of Butler street and Almond alley towards the Allegheny Valley Railroad. Drury informed the two men of the reported stealing of copper and instructed them to continue down Almond alley and to arrest any person coming from the arsenal. Drury himself left Almond alley at the corner

of Willow street and went by Willow street to Fortieth street (which runs along but outside of the arsenal wall), and proceeded down Fortieth street to its foot, where were congregated three or four half-grown boys or young men, among whom was William H. Crowley, aged about 19 or 20 years. These persons fled in different directions when they saw Lieutenant Drury approaching. Crowley ran from the foot of Fortieth street away from the arsenal property in the direction of Forty-first street, keeping on or near the Allegheny Valley Railroad. When he was about one hundred yards from the arsenal wall Crowley was shot by Dowd, who aimed and fired his rifle at Crowley. At the time of the shooting, Drury, Dowd, and Crowley were all off the ground belonging to the United States. Each one of the three then stood either upon a street of the city, on the Allegheny Valley Railroad, or on private property. The rifle ball struck Crowley's left thigh, inflicting a mortal wound from which he died on the evening of the same day—September 10th, 1903.

"Thus far the facts are not open to dispute under the testimony. But as to the circumstances attending the shooting of Crowley the evidence is conflicting and leads to opposite conclusions of fact as one or other version of the affair given by the witnesses is accepted. Dowd testifies, and the petitioners have produced other evidence tending to show, that as Crowley fled he was called on several times by Dowd, who followed him, to halt, with warning that unless he halted Dowd would fire; that Crowley did not halt, but continued his flight, and to prevent his escape behind or through a lumber pile Dowd fired, and that Drury did not order Dowd to fire, and was not connected with the shooting save by the fact that he ordered the arrest of any person coming from the arsenal. On the other hand, two witnesses who were present (Miss Terwillerger and Mrs. Long) testify that before the shot was fired Crowley stopped, turned around facing the pursuing soldier (Dowd), threw up his hand, said, 'Don't shoot,' 'I will come back,' or 'I will give up,' and that just then Lieutenant Drury said 'fire,' and Dowd fired the shot that killed Crowley. The testimony of at least one other witness tends to corroborate the account of the transaction given by the two named women as above recited. It is not for me to say whether or not the witnesses who have testified thus on the part of the Commonwealth are mistaken.

"In view of all the evidence herein, should this court interfere to prevent the trial of the petitioners upon the indictment in the State court, take the petitioners out of the custody of the authorities of the State, and discharge them finally without trial by any civil court in the regular administration of justice? This is the question which confronts me." 129 Fed. Rep. 823.

The court entered an order discharging the writ and remanding petitioners to the custody of the warden of the jail of Allegheny County, and from that order this appeal was allowed and prosecuted.

Mr. Chief Justice FULLER delivered the opinion of the Court:

In *Baker* v. *Grice*, 169 U. S. 284, 290, an appeal from the final order of the Circuit Court of the United States for the Northern District of Texas, in *habeas corpus*, it was said:

"The court below had jurisdiction to issue the writ and to decide the questions which were argued before it. *Ex parte Royall*, 117 U. S. 241; *Whitten* v. *Tomlinson*, 160 U. S. 231. In the latter case most of the prior authorities are mentioned. From these cases it clearly appears, as the settled and proper procedure, that while Circuit Courts of the United States have jurisdiction, under the circumstances set forth in the foregoing statement, to issue the writ of *habeas corpus*, yet those courts ought not to exercise that jurisdiction by the discharge of a prisoner unless in cases of peculiar urgency, and that instead of discharging they will leave the prisoner to be dealt with by the courts of the State; that after a final determination of the case by the State court, the Federal courts will even then generally leave the petitioner to his remedy by writ of error from this court. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal courts by which a person under an indictment in a State court and subject to its laws may, by the decision of a single judge of the Federal court, upon a writ of *habeas corpus*, be taken out of the custody of the officers of the State and finally discharged therefrom, and thus a trial by the State courts of an indictment found under the laws of a State be finally prevented. Cases have occurred of so exceptional a nature that this course has been pursued. Such are the cases *In re Loney*, 134 U. S. 372, and *In re Neagle*, 135 U. S. 1, but the reasons for the interference of the Federal court in each of those cases were extraordinary, and presented what this court regarded as such exceptional facts as to justify the interference of the Federal tribunal. Unless this case be of such an exceptional nature, we ought not to encourage the interference of the Federal court below with the regular course of justice in the State court."

The rule thus declared is well settled and, in our judgment, it was properly applied in this case. Crowley was a citizen of Pennsylvania, not in the service of the United States, and was killed in or near a street of the city of Pittsburgh, and not on property belonging to the United States or over which the United States had jurisdiction.

The homicide occurred within the territorial jurisdiction of the Court of Oyer and Terminer, which, as Judge Acheson observed, was the only civil court which could have jurisdiction to try petitioners for the alleged unlawful killing, and the indictment presented a case cognizable by that court.

The general jurisdiction in time of peace of the civil courts of a State over persons in the military service of the United States, who are accused of a capital crime or of any offense against the person of a citizen, committed within the State, is, of course, not denied.

But it is contended on behalf of the Government that the State court was absolutely without jurisdiction to try petitioners for the killing of Crowley, because the homicide was committed by them "while in the lawful performance of a duty and obligation imposed upon them by the Constitution and laws of the United States." The argument is that Crowley had been guilty of the crime of larceny and could have been indicted and

prosecuted on the charge of felony in the District Court of the United States under section 5439 of the Revised Statutes, or under section 5391, the United States having jurisdiction over the Allegheny Arsenal property and the Pennsylvania laws making what Crowley is alleged to have done a felony. Hence that it was the duty of petitioners to arrest Crowley and to surrender him to the Federal authorities for prosecution. And it is insisted that the fact is "established that Crowley met his death while attempting to escape arrest." But there was a conflict of evidence as to whether Crowley had or had not surrendered, and it is conceded that if he had, it could not reasonably be claimed that the fatal shot was fired in the performance of a duty imposed by the Federal law, and the State court had jurisdiction.

The Circuit Court was not called on to determine the guilt or innocence of the accused. That was for the State court if it had jurisdiction, and this the State court had, even though it was petitioners' duty to pursue and arrest Crowley, (assuming that he had stolen pieces of copper,) if the question of Crowley being a fleeing felon was open to dispute on the evidence; that is, if that were the gist of the case, it was for the State court to pass upon it, and its doing so could not be collaterally attacked. The assertion that Crowley was resisting arrest and in flight when shot was matter of defense, and *Ex parte Crouch*, 112 U. S. 178, is in point.

We have repeatedly held that the acts of Congress in relation to *habeas corpus* do not imperatively require the Circuit Courts to wrest petitioners from the custody of State officers in advance of trial in the State courts, and that those courts may decline to discharge in the proper exercise of discretion. We think that discretion was properly exercised in this case.

Final order affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.